

Removal of the sanction of imprisonment as an enforcement method for council tax arrears in Wales

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2023

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Submitted in partial fulfilment of the requirements for the degree of Doctor of Philosophy (Law).

Thesis Summary

Council tax is a well-established household expense and a fundamental component of local authority revenue, used to fund local services. The majority of households are able to pay their bill, but when individuals fall into arrears, the local authority steps into the role of creditor and must act to enforce payment.

This thesis explores the legal framework of council tax enforcement following the removal of the sanction of imprisonment in Wales from 2019. Existing research is challenged for its privileging of quantitative data, lack of methodological reflexivity and bias in favour of certain agendas. It considers how imprisonment was defined in law, the impact this had on the rights and procedural protections of debtors, how the sanction was justified and what factors influenced its use. Building on this understanding, it moves on to question why the sanction was removed in Wales and what the early impacts of its removal have been on council tax enforcement. Novel evidence was generated through qualitative analysis of case law, responses to a public consultation and semi-structured interviews with local authority staff in Wales.

The concept of the 'punitive civil sanction' is applied to council tax enforcement to demonstrate the hybrid nature of imprisonment as a sanction and the impact on debtors. The decisions of local authority enforcement staff are examined with reference to the 'street-level bureaucracy' concept, identifying the emotional responses and entrenched mechanisms which informed their use of imprisonment and attitudes to indebtedness. Drawing on these three sources of socio-legal data and utilising this dual conceptual framework, this thesis argues that the removal of imprisonment from the legal framework of council tax enforcement was undoubtedly positive. However, caution is recommended in future reforms, such as the introduction of new enforcement powers or the extension of current powers, lest we re-introduce a punitive sanction in an alternative form, continuing the problematic hybrid of criminal and civil law. It advocates for a methodological paradigm shift in the future of debt enforcement research, and greater appreciation of the impact of austerity on every facet of the council tax enforcement system.

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Acknowledgements

Firstly, thank you to my supervisors, Wendy Kennett and Tom Hayes. Although I have enjoyed every stage of my studies, this thesis would not have been realised without your unwavering support and enthusiasm. Thank you for giving me freedom to be independent and for your thoughtful and engaging feedback on my writing. Thanks also to Annette Morris and Pauline Roberts for your encouragement and kindness in reviewing my early drafts.

Thank you to my participants, for allowing me into your workplaces and engaging with my questions. I am so grateful to have been able to speak to you in person shortly before the beginning of the pandemic and am proud to shine a light on an important area. I hope this thesis in some small way challenges the idea that ‘for Wales: see England’.

Thank you to the Economic and Social Research Council for funding this research and for supporting my training in social science research methods. Sincere thanks to the School of Law and Politics for inviting me into your research community, I have learned so much from my time spent in the school about the importance of research, teaching, and collegiality. Huge thanks to the postgraduate team, in particular Sharron Alldred, for guiding me through the PhD process and its many forms.

Thank you to the amazing friends I have made in the postgraduate community. Lizzy, Claire, Caer, Emma – thanks for letting me be in the band! Thanks also to Rachael, Lauren, Rosie, Kat, Rosa, Sara, Elin, Anneka and Siân, what an amazing group of women to surround myself with! Thanks to my two feline Research Assistants, Noomi and Bryn, for being loyal companions. On days where I’ve struggled to write, I was comforted by at least having kept the two of you happy. Thanks to my family and to Cornwall, my home, for being the best place to retreat to and blow away the thesis cobwebs.

Finally, thank you to Drew. You convinced me to apply for a PhD and set me on a course to finding what I love to do, for which I will always be grateful. Thank you for

your love and support, for believing in me, and making me laugh every day.

This thesis is dedicated to my wonderful gran, Joan. Thank you for nurturing my love of learning, and for the 'tea and tomfoolery'.

Thank you / Diolch / Meur ras

INTRODUCTION

*'[debt] has the capacity to turn morality into a matter of impersonal arithmetic – and by doing so, to justify things that would otherwise seem outrageous or obscene.'*¹ (David Graeber)

*'My view is that getting into debt is not a crime. The sanction of imprisonment is an outdated and disproportionate response to a civil debt issue.'*²

(Mark Drakeford)

In 2023, council tax comprises almost one fifth of local authority revenue in Wales and is used to fund vital local services. The twenty-two local authorities of Wales must maximise the amount of council tax collected each year, or they will be unable to fund essential resources for their communities. However, the cost of council tax for households has risen by nearly 50% since 2012, meaning that for many households this expense becomes unaffordable. Citizens of Wales, as well as the rest of the UK, are currently struggling with the effects of an acute 'cost of living crisis', making everyday essentials and priority bills increasingly unaffordable. It is at the intersection of these two problems, sustainable local authority revenue and manageable household costs, that this thesis is situated. When these two issues collide, and individuals fall behind with their council tax payments, local authorities take on the role of creditor, working within regulations which dictate the legal methods they can use to seek payment of council tax arrears. Until April 2019, the most severe sanction available to local authorities in Wales to enforce payment of council tax was imprisonment of the debtor for up to three months. This legal sanction (which was retained in England) forms the focus of this thesis and provides an opportunity to consider the legal enforcement of council tax arrears more widely. Imprisonment, often referred to as a 'last resort', acts as an effective lens through which to examine how local authorities make decisions and exercise discretion when enforcing payment of arrears. Because of the severity of the sanction of

¹ David Graeber, *Debt: The First 5,000 Years* (Melville House 2011) 14.

² 'Consultation Document: Removal of the Sanction of Imprisonment for the Non-Payment of Council Tax' (Welsh Government 2018) WG35286.

imprisonment, it also provides an opportunity to examine the role of the courts in council tax enforcement.

In developing a research project in this area, I formulated five research questions which framed my approach to data collection, analysis, and the presentation of findings.

1. How were committal proceedings and imprisonment defined in law, and what impact did this definition have on the rights and procedural protections of debtors?
2. How was committal justified as an enforcement method for council tax arrears in Wales?
3. What factors influenced local authorities in Wales when they made decisions about how to enforce payment of council tax arrears?
4. Why was committal removed as an enforcement method for council tax arrears in Wales in 2019?
5. What has been the impact of the removal of committal as an enforcement method for council tax arrears, and what does this suggest about the future of council tax enforcement in Wales?

This thesis provides an empirically informed response to these questions, building a strong foundation for further qualitative research in this area. In the remainder of this section, I will set out the structure of the thesis and summarise the content of each chapter.

Chapter One maps out the landscape of council tax, beginning with its origins as the replacement to the community charge before setting out how it is calculated, the discounts and exemptions which are available and how rates of collection of council

tax have fared in recent years. The second part of this chapter presents the different stages of the legal enforcement framework, building up to the final sanction of imprisonment, and commenting on some of the benefits and disadvantages to earlier enforcement options which must be exhausted prior to an application for committal.

In Chapter Two I provide a critical review of existing literature on council tax enforcement, including research by third-sector debt advice organisations, government researchers and academics. I characterise third-sector publications as ‘advocacy research’ based on the common features of their reports (including presentation styles, definitions, data sources and sampling methods) which I argue are influenced by their organisational agendas, compromising their reliability and utility. I also argue that research conducted to date has tended to focus on quantitative measuring of the scale of the use of certain enforcement methods. This has had two undesirable effects: firstly, attention is frequently shifted away from the use of imprisonment because it is perceived as a rare occurrence, meaning its use was rarely questioned in research. Secondly, there has been very limited engagement in the reasons *why* certain enforcement measures, in particular committal, have been used by local authorities. The changing financial landscape of the third sector and the limitations of access to frontline decision making are discussed to contextualise the methodological gaps I identify in the existing literature, leading to a conclusion that there is a significant need for independent, qualitative research on council tax enforcement.

To respond to the methodological gap identified in Chapter Two, Chapter Three provides an in-depth explanation of the research design, including the disciplinary influences of socio-legal research, the epistemological position of social constructionism and a justification for a qualitative approach with its specific expectations of research quality. Following on from this, I set out the ethical implications of the research design and introduce the three empirical sources: case law records of appeals against imprisonment, responses to a Welsh Government public consultation on imprisonment, and semi-structured interviews with enforcement staff from five Welsh local authorities about their working practices.

Finally, I reflect on the process of conducting interviews and how I transcribed and analysed their content thematically, alongside the first two sources.

The research design and analysis were informed by two concepts which I define and critique in Chapter Four – Kenneth Mann’s ‘punitive civil sanction’ and Michael Lipsky’s ‘street-level bureaucracy’. These concepts are both cautionary, in that they identify a set of characteristics which occur in law and society which have the potential to be positive or negative. These concepts also have broad applicability to socio-legal research perhaps because of their ability to help us to interpret and understand complexity. In terms of the punitive civil sanction, I start by mapping the five key elements of Mann’s framework against the features of committal for council tax arrears, concluding that this is a clear example of a punitive civil sanction; a criminal sanction applied to a civil law issue with none of the procedural safeguards of the criminal law but all of the risk to liberty. This analysis is developed further in Chapter Five. The idea of the street-level bureaucrat is discussed with reference to previous research which has utilised this concept, and its central characteristics. I enhance the conceptual benefit of this concept for my own research area by adopting Halliday’s focus on the emotional, rather than purely rational, elements of discretion and decision-making.

Chapter Five signals the beginning of the second part of the thesis which houses my original analysis of three empirical sources. Each of the empirical sources were analysed and are presented separately, before being discussed collectively in Chapter Eight. The first source is a body of case law in which individuals sought appeals by way of judicial review against their imprisonment for failure to pay community charge and council tax. The records of these appeals provide insights into how imprisonment was defined domestically and in the European Court of Human Rights, building on the idea of the punitive civil sanction which straddles civil and criminal law boundaries. The cases are then analysed to understand how judges defined the purpose of this sanction and how rules of evidence were applied to the legal test of ‘wilful refusal or culpable neglect’. Finally, having seen how problematic the confused status of this sanction was, I consider some of the fundamental

safeguards of criminal law (appeals, the right to legal representation and proportionality of sanctions), building on the work of Rona Epstein to make clear the level of disadvantage heaped upon debtors who faced imprisonment.

The cases analysed in Chapter Five span four decades and as a collection are illustrative of the multiple issues associated with committal, resulting in successful appeals. However, I would argue that one case has been most influential in making public the problems of committal for council tax arrears and acting as the ‘final straw’ in the use of this sanction in Wales. The case of Melanie Woolcock, and the data that it brought to light about the level of wrongful committals, are discussed in detail in Chapter Six, in particular, the way in which the frequency of judicial errors was quantified so as to minimise and invalidate her claim of procedural unfairness. This case, I argue, prompted the Welsh Government to consult on the continued use of committal for council tax arrears, and the second half of Chapter Six presents analysis of responses submitted by local authorities to this consultation. The themes which were common to these responses, such as concerns around the impact on collection rates without committal and the need for new powers to replace it, informed preparations for interviews with local authorities.

The final analysis chapter, Chapter Seven, presents the main themes identified from analysis of transcripts of interviews with five local authorities in Wales. These include how they describe their work, its goals and expectations, how they made decisions about committal, what they think the impact will be of its removal and how they feel about the future of their roles. These themes build a narrative of the realities of debt enforcement, an extremely challenging task made more difficult by fiscal austerity. Local authorities can be seen simultaneously as experts on the realities of poverty and cynics who maintain that only greater enforcement rights and punitive sanctions can protect collection rates in Wales. In constructing this narrative, they neglect the full economic realities of committal as an enforcement method and disregard the rights of debtors to fair enforcement.

Chapter Eight weaves together the three empirical sources, using the guiding concepts of the punitive civil sanction and the street-level bureaucrat, and provides a response to each research question. In drawing together the findings I conclude that the legal enforcement of council tax arrears is now undoubtedly improved in terms of its legal status and procedural fairness because of the removal of committal, and argue that any future mechanisms for its enforcement should only use the fixings of civil law. I outline the need for further qualitative research in this area, and advocate that such research should not prioritise consideration of the rational elements of enforcement decision making to the exclusion of the emotional elements.

Throughout the thesis, austerity is identified as a causative agent in almost all of the problems of fair enforcement, including its influence on the debt advice sector, dominant research methods, judicial resources and the working practices and expectations of local authorities.

CHAPTER ONE – RESEARCH CONTEXT

This chapter contextualises the financial and legal obligation which forms the subject of the thesis. Council tax is a well-established and familiar form of local taxation which is collected by local authorities and used to fund a range of local services, including planning, transport, highways, police and fire services, libraries, leisure facilities, refuse disposal, environmental health, and trading standards.³ Its specific workings are perhaps less widely known; when asked how much they knew about council tax, 43% of respondents to a representative survey of citizens in Wales indicated that they knew ‘very little’, with 7% reporting that they knew ‘nothing at all’.⁴

In the first part of this chapter, I will explain the way in which council tax bills are set and collected in Wales. In setting out its workings I will reflect on the influence of its local taxation predecessors and the ways in which its design as a system of taxation can lead to unaffordable bills and problem debt.

In part two I will provide an overview of the legal framework for enforcement of council tax arrears in Wales. Imprisonment was the final enforcement stage in this legal framework, and it is important that it is considered as part of its wider system to understand why earlier methods were not always effective in recovering arrears.

THE ORIGINS OF COUNCIL TAX AND HOW IT IS CALCULATED

Council tax was introduced by the Local Government Finance Act 1992 as an alternative form of local taxation, used from 1 April 1993 in England and Wales. It can be seen as a compromise between its two predecessors, domestic rates, and the highly controversial and short-lived community charge, or ‘poll tax’, as it was

³ ‘Q&A: Council Tax’ *BBC News* (24 September 2010) <<https://www.bbc.com/news/uk-11402884>> accessed 10 May 2021.

⁴ Jennie Mack and Nerys Owens, ‘Survey of Public Attitudes to Council Tax’ (Welsh Government 2022) 48/2022 <<https://gov.wales/sites/default/files/statistics-and-research/2022-07/survey-of-public-attitudes-to-council-tax.pdf>> 11.

commonly known.⁵ Domestic rates were charged in proportion to the assessed market rental value of a property, whereas the community charge was levied at a flat rate per adult occupier, which was perceived as penalising larger households.⁶ The community charge was widely criticised by the public as unfair because of the way in which 'dukes and dustmen' would be liable for the same amount.⁷ The way in which the tax was calculated also necessitated reliable information about the number of adults living in a household, creating significant complexity in the registration process and concerns over data protection.⁸ Following non-payment by as much as a quarter of the taxpayer population in England and Wales,⁹ and rioting in London which led to injuries and arrests,¹⁰ the community charge was replaced with council tax. This signalled a return to using property value as the basis for local domestic taxation, but the relevance of the number of occupiers continues, for example, in discounts for single-adult households (discussed further below).¹¹ The extent of the public negativity towards the community charge is evident in the speed of its replacement with council tax; this is unusual given the general reluctance of government to introduce tax changes, described by Prabhakar as the 'tyranny of the status quo'¹². The repercussions of the failed community charge were also significant and long-lasting; committal proceedings spiked as a result of the widespread non-payment and magistrates' court hearings continued in large numbers throughout the 1990s. Murdie and Wise identify this period of resistance as a key turning point in the transformation of enforcement of local taxation from a bureaucratic process to one

⁵ Stuart Adam and others, 'Revaluation and Reform of Council Tax in Wales: Impacts on Different Councils and Household Types' (The Institute for Fiscal Studies 2020)
<<https://ifs.org.uk/publications/14760>> accessed 11 May 2021, 9.

⁶ Adam et al (n 5) 9.

⁷ 'National Archives: Thatcher's Poll Tax Miscalculation' *BBC News* (30 December 2016)
<<https://www.bbc.com/news/uk-38382416>> accessed 11 May 2021.

⁸ Alan Murdie and Ian Wise, *Enforcement of Local Taxation: An Advisers' Guide to Non-Payment of Council Tax and the Poll Tax* (Legal Action Group 2000) 10.

⁹ Richard Bellamy, 'The Anti-Poll Tax Non-Payment Campaign and Liberal Concepts of Political Obligation' (1994) 29 *Government and Opposition* 22; Richard Murgatroyd, 'The Popular Politics of the Poll Tax: An Active Citizenship on the Left?' (Brunel University 2000).

¹⁰ '1990: Violence Flares in Poll Tax Demonstration' (31 March 1990)
<http://news.bbc.co.uk/onthisday/hi/dates/stories/march/31/newsid_2530000/2530763.stm> accessed 11 May 2021.

¹¹ Adam et al (n 5) 9.

¹² Rajiv Prabhakar, 'How Did the Welsh Government Manage to Reform Council Tax in 2005?' (2016) 36 *Public Money & Management* 417.

coloured with legal argument.¹³

LOCAL GOVERNMENT FINANCE IN WALES

Responsibility for local government finance and council tax collection is devolved to the Welsh Government,¹⁴ permitting divergence from the system which originally applied to England and Wales. Council tax receipts are one of five sources of revenue for local authorities in Wales which make up their £9.6billion total annual revenue.¹⁵ £1.8billion is raised each year from council tax charged to approximately 1.4 million chargeable dwellings.¹⁶

Council tax now comprises approximately nineteen per cent of total gross revenue for local authorities, a share which is growing in what has been described as a shift towards local taxation in Welsh fiscal policy.¹⁷ This shift can be seen in reductions in the Welsh Government spending budget of 5.3% since 2009, with resultant reductions in the budget allocated to local government of 3.6%, which local authorities have offset by increases to council tax.¹⁸ This decentralisation of fiscal power can also be seen in the rate-setting system; each local authority in Wales has discretion to set its own annual council tax rate, with no upper limit on tax rates and no requirement for a referendum on rate changes, as there is in some parts of England.¹⁹

¹³ Murdie and Wise (n 8) 3-4.

¹⁴ Exceptions to 15, Head A, Part 2, Schedule 7A Government of Wales Act 2006.

¹⁵ Welsh Government, 'Reforming Local Government Finance in Wales: Summary of Findings' (2021) 102. The other four sources of revenue are: Revenue Support Grant (£3.5billion), Specific Grants (£1.9billion), Non-Domestic Rates (£1.1billion) and Fees and Charges (£1.3billion).

¹⁶ Ibid 102.

¹⁷ Guto Ifan and Cian Sion, 'Cut to the Bone? An Analysis of Local Government Finances in Wales, 2009-10 to 2017-18 and the Outlook to 2023-24' (Wales Fiscal Analysis 2019) 5.

¹⁸ Cian Sion, 'Cut to the Bone? How a Decade of Austerity Has Left Its Mark on Local Government in Wales' (*Cardiff University*, 12 February 2019) <<https://blogs.cardiff.ac.uk/thinking-wales/2019/02/12/cut-to-the-bone-how-a-decade-of-austerity-has-left-its-mark-on-local-government-in-wales/>> accessed 2 June 2021.

¹⁹ The Localism Act 2011 introduced a referendum scheme for local authorities in England only. For example, in 2015, Bedfordshire Council held a referendum on a proposed increase of 15.8%. 30.5% of voters supported the proposal, whereas 69.5% opposed it. Mark Sandford, 'Council Tax: Local

The legal framework which underpins council tax in Wales is complex, with forty-two statutory instruments relating to calculation of liability and fifty-one dealing with its administration.²⁰

VALUATION AND CHARGES

The current system is similar to domestic rates, used prior to 1990, in that the rate of payment is linked to property value, but a significant difference is that the current charging system is based on *relative* property values.²¹ Assessment of property value is the responsibility of the Valuation Office Agency, which is appointed by His Majesty's Revenue and Customs (HMRC) and is therefore a shared function between England and Wales.²² Welsh Ministers have some devolved power to influence the assumptions and principles which underpin valuation, but their overall control is limited.²³

Properties are placed into bands²⁴ based on their notional sale value and charges in each band increase in fixed proportion to a Band D property charge, as demonstrated in Figure 1 below. The Welsh Government determine the ratios which apply between each band, but local authorities decide the annual Band D rate, prompting the other band rates to increase or decrease in fixed proportion to Band D.²⁵

Referendums' (House of Commons Library 2021) Briefing Paper 05682. The removal of the requirement for referenda formed part of the November 2022 Conservative Government Budget.

²⁰ Welsh Government (n 15) 12.

²¹ Prabhakar (n 12) 418.










²² Welsh Government (n 15) 10

²³ Ibid.

²⁴ These valuation bandings are based on a number of theoretical assumptions about the condition and legal status of the property which may or not be true but ensure that valuations are applied consistently across all properties; assumptions are made of vacant possession and a reasonable state of repair, whereas factors such as development potential and the value of any fixtures are disregarded. The valuation assumptions are set out in The Council Tax (Situation and Valuation of Dwellings) Regulations 1992 SI 1992/550.

²⁵ Welsh Government (n 15) 40-41.

Figure 1 Tax Rates Relative to Band D²⁶

| A | B | C | D | E | F | G | H | I |
|-----------------------------------------------------------------------------------|-----------------------------------------------------------------------------------|-----------------------------------------------------------------------------------|-----------------------------------------------------------------------------------|-----------------------------------------------------------------------------------|-----------------------------------------------------------------------------------|------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------|
|  |  |  |  |  |  |  |  |  |
| 6/9 | 7/9 | 8/9 | 1 | 11/9 | 13/9 | 15/9 | 2 | 21/9 |
| 66.6% | 77.7% | 88.8% | 100% | 122.2% | 144.4% | 166.6% | 200% | 233.3% |

The current property values in Wales are based on the most recent valuation exercise, which was conducted on 1 April 2003.²⁷ Wales is unique in being the only nation of the UK to have conducted a revaluation since the introduction of council tax.²⁸ Following devolution, the Welsh Government published a report in 2000²⁹ which considered several options for changes to local government finance in Wales, including a revaluation of bandings with a view to making the council tax liability structure more progressive.³⁰ Progressivity is a principle of fair taxation which asserts that ‘richer people should pay a higher proportion of their income or wealth than poorer people on taxation’.³¹ Specific approaches to revaluation were put to the public during consultations in 2002 and 2003, before an ultimate decision to introduce an additional Band I for the highest value dwellings achieved public and

²⁶ Local Government Finance Act 1992 Section 5(1A) as amended by The Council Tax (Valuation Bands) (Wales) Order 2003 Article 2(2).

²⁷ Welsh Government (n 15)

²⁸ Welsh Government (n 15)

²⁹ ‘Simplifying the System: Local Government Finance in Wales - A Consultation Paper from the Cabinet of the National Assembly’ (National Assembly for Wales 2000).

³⁰ Prabhakar (n 12) 420.

³¹ *ibid* 418.

political consensus.³² Although this revaluation brought property valuations up to date, the Welsh Government came under significant criticism because of the number of households which moved up a band, meaning their council tax liability would increase, despite the fact that the majority (67%) of households either remained in the same band or moved down to a lower band, paying the same or less than previously.³³ These criticisms, and the suggestion that Wales was being used as a 'guinea pig' for potential revaluation exercises in England, prompted the First Minister of Wales to cancel the further planned revaluation in 2015.³⁴ Valuations in England and Scotland have not been revisited since 1992.

In July 2022 the Welsh Government announced that they were considering a revaluation exercise 'to ensure valuations are up-to-date and people are paying the appropriate amount'.³⁵ They launched a public consultation on this and other proposals in July 2022. Survey findings in 2022 indicated that less than half (47%) of residents in Wales agreed that their council tax bill reflects the current value of their home.³⁶

Table 1 below sets out the property values for each council tax band pre- and post-revaluation. Since 2005, Wales has used the additional Band I for properties valued over £424,000.

³² *ibid* 420.

³³ *Ibid* 421.

³⁴ Prabhakar (n 12) 422.

³⁵ 'Fairer Council Tax for Wales' (Welsh Government 2022) <<https://gov.wales/fairer-council-tax-wales>> accessed 15 July 2022.

³⁶ Mack and Owens (n 4) 14.

Table 1 - Council Tax Bands and Property Values 1993 and 2005-Present³⁷

| Council Tax Band | Property Values (£) Wales 1993 | Property Values (£) Wales 2005-Present |
|------------------|-----------------------------------|-------------------------------------------|
| A | Not Exceeding 30,000 | Not Exceeding 44,000 |
| B | 30,001 – 39,000 | 44,001 – 65,000 |
| C | 39,001 – 51,000 | 65,001 – 91,000 |
| D | 51,001 – 66,000 | 91,001 – 123,000 |
| E | 66,001 – 90,000 | 123,001 – 162,000 |
| F | 90,001 – 120,000 | 162,001 – 223,000 |
| G | 120,001 – 240,000 | 223,001 – 324,000 |
| H | Exceeding 240,001 | 324,001 – 424,000 |
| I | N/A | Exceeding 424,000 |

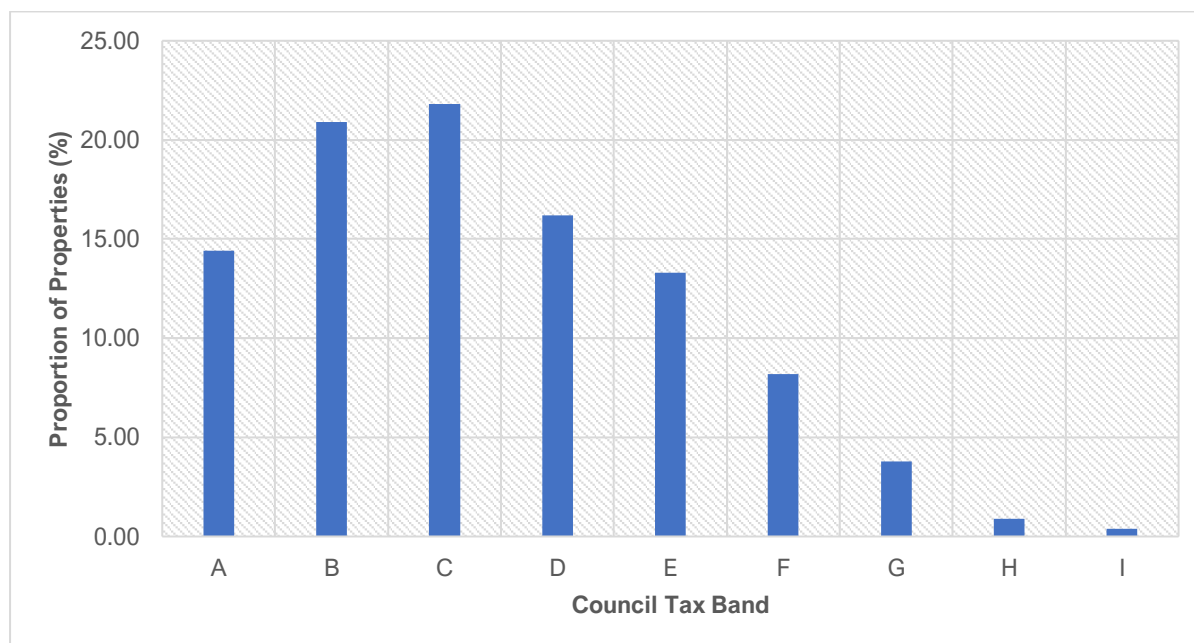
Table 2 and Figure 2 below demonstrate the number and proportion of properties currently in each of the council tax bands. As can be seen, the most common band in Wales is Band C, with over 300,000 properties. The new Band I is the least common band in Wales, with only 5,462 properties, even though there is no upper limit on the property value of this band, meaning it would apply to the large range of properties valued above £424,000.

³⁷ Prabhakar (n 12) 421; Local Government Finance Act 1992 Section 5(3), as amended by The Council Tax (Valuation Bands) (Wales) Order 2003 Article 2(3).

Table 2 - Number of Properties in each Council Tax Band (2021-22)³⁸

| Council Tax Band | Number of Properties |
|------------------|----------------------|
| A | 201,154 |
| B | 292,371 |
| C | 304,638 |
| D | 226,669 |
| E | 186,443 |
| F | 114,841 |
| G | 52,670 |
| H | 12,612 |
| I | 5,462 |

Figure 2 Proportion of Properties in Each Council Tax Band (2021-22) (%)³⁹



³⁸ 'Council Tax Dwellings, by CT1 Row Description (Number of Dwellings)' (Welsh Government 2022) <<https://stats.wales.gov.wales/Catalogue/Local-Government/Finance/Council-Tax/Dwellings/counciltaxdwellings-byct1rowdescription>> accessed 10 May 2021.

³⁹ 'Proportion of Council Tax Dwellings, by Local Authority (per Cent)' (Welsh Government 2022) <<https://stats.wales.gov.wales/Catalogue/Local-Government/Finance/Council-Tax/Dwellings/proportionofcounciltaxdwellings-by-localauthority>> accessed 10 May 2021.

To give an example of the consequences of different bands, a householder in a Band A property in Cardiff in 2021-22 would be liable to pay, on average, £889.27 a year, or £74.11 a month, whereas a householder in a Band I property in the same area would be liable to pay £3,734.92 a year, or £311.24 a month.⁴⁰ Despite this significant difference in the level of liability, the progressivity of the tax remains limited inasmuch as, in this example, a Band A charge is approximately 24% of a Band I charge, but the highest valued Band A property would have, at most, 10% of the value of the lowest valued Band I property. On average in Wales, the difference in values between Band A and Band I properties is 9.5-fold, but the difference in the tax rates they are expected to pay is only 3.5-fold.⁴¹ The system is therefore regressive to property values, meaning the amount people are expected to pay is somewhat arbitrary.⁴² Furthermore, property value does not correlate with household income or wealth,⁴³ which creates a risk that the bill received by a household may be unaffordable. This can be particularly problematic for pensioner households, who may have accumulated significant financial assets such as outright ownership of their home but may live on a relatively low income from their pension compared with those of working age, often referred to as the problem of the 'asset rich, but cash poor'.

The distribution of bands has some clear geographical patterns, as can be seen in Figure 3 below, which mean that council tax affordability may vary between local authority areas. For example, in the 2021-22 financial year, more than half of dwellings in the local authority areas of Blaenau Gwent (58.3%) and Merthyr Tydfil (51%) were in Band A (valued at less than £44,000), whereas in the local authority area of Monmouthshire, nearly three quarters of properties (74.6%) were in Band D

⁴⁰ 'Council Tax Levels by Billing Authority and Band (£)' (Welsh Government 2022) <<https://statswales.gov.wales/Catalogue/Local-Government/Finance/Council-Tax/Levels/counciltaxlevels-by-billingauthority-band>> accessed 11 May 2021. This excludes any discounts, exemptions or the Council Tax Reduction Scheme.

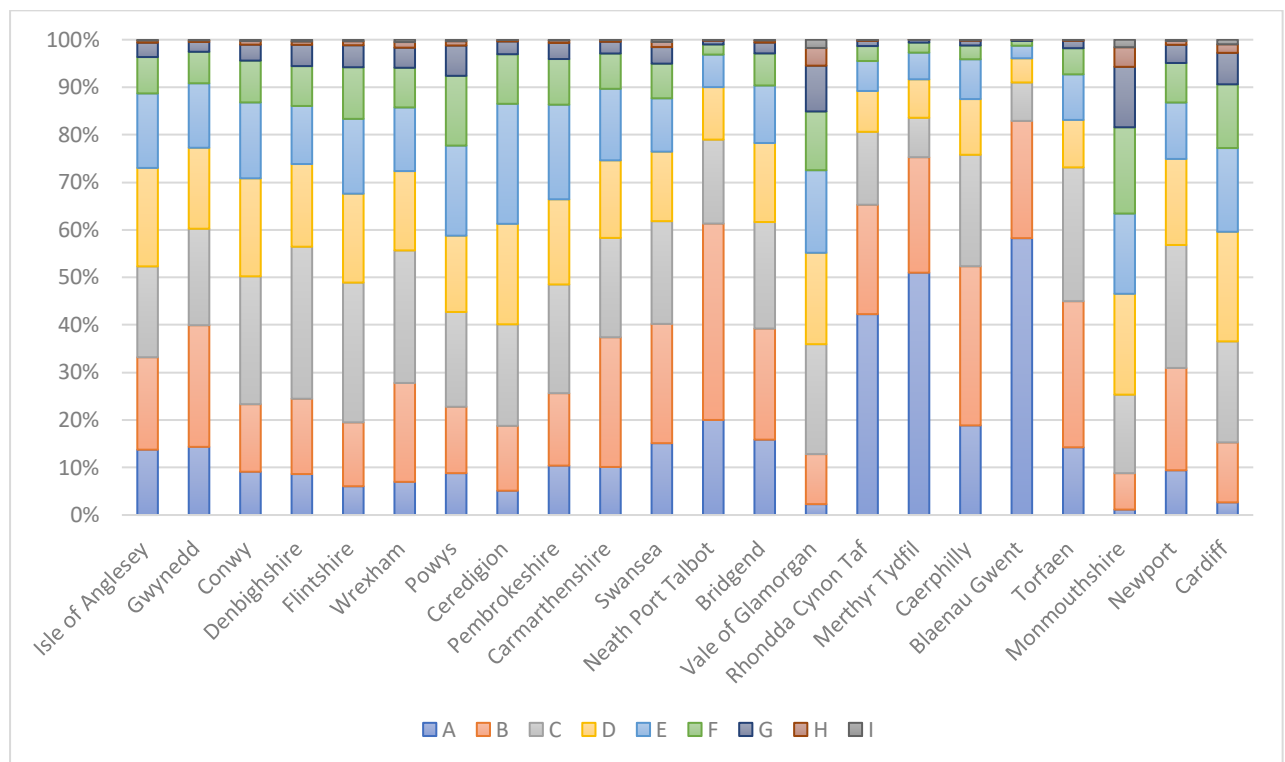
⁴¹ Adam and et al (n 5).

⁴² Stuart MacLennan, 'Grasping the Third Rail: Reforming Local Taxation in Scotland' (2016) 2 British Tax Review 208; Rhys Davies, Michael Orton and Derek Bosworth, 'Local Taxation and the Relationship between Incomes and Property Values' (2007) 25 Environment and Planning C: Government and Policy 756.

⁴³ Adam and et al (n 5) 16.

or above (valued above £91,001).⁴⁴ This has an impact on the Band D rates; local authorities with a larger number of properties in the lower bands are forced to inflate their Band D rate to offset their lower value housing stock.⁴⁵ This means that those areas with the lowest valued properties, and therefore the smallest tax base, have the highest Band D rates; a Band D charge in Blaenau Gwent is currently £2,078.20, whereas in more affluent Monmouthshire it is only £1,758.68.⁴⁶ Rates of council tax are also 21% higher in rural areas than urban areas of Wales.⁴⁷

Figure 3 Proportion of Properties in Each Band by Local Authority (2021-22)⁴⁸



Local authorities must set the council tax charge at a level that meets their estimated total expenditure for the financial year.⁴⁹ Tax rates are politically determined at the local government level by council leaders, with no cap on rates in Wales and no

⁴⁴ 'Proportion of Council Tax Dwellings, by Local Authority (per Cent)' (n 39).

⁴⁵ Adam et al (n 5) 10.

⁴⁶ 'Council Tax Levels by Billing Authority and Band (£)' (n 40).

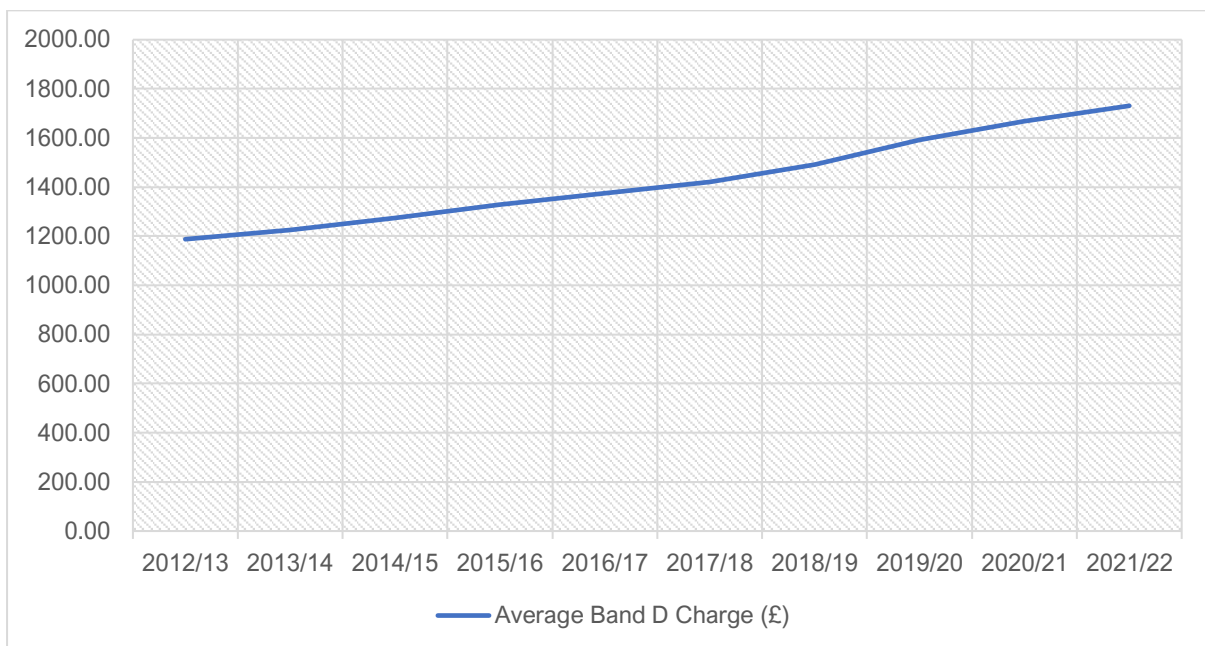
⁴⁷ Ifan and Sion (n 17) 16.

⁴⁸ 'Council Tax Levels by Billing Authority and Band (£)' (n 40).

⁴⁹ MacLennan (n 42) 218; Local Government Finance Act 1992 Sections 32 and 33.

requirement for a referendum on rate changes.⁵⁰⁵¹ This is in line with the recommendations of the Lyons Inquiry into Local Government of 2007,⁵² but contrasts with the position in England, where since 2011 local authorities have had to conduct a local referendum if they propose ‘excessive’ council tax increases.⁵³ As illustrated in Figure 4 below, the cost of council tax in Wales has risen year on year, demanding a larger share of household income. Between 2012 and 2022, the average Band D charge for Wales has increased by 45.7%, or £543.14.⁵⁴

Figure 4 Average Band D Charge (Wales) (2012-2022)



BILLING

Council tax is an annual charge which follows the standard financial calendar of 1st April to 31st March. Although the individual liability of each household is calculated

⁵⁰ Senedd Cymru retain an option to cap local authority council tax increases selectively.

⁵¹ Welsh Government (n 15) 102.

⁵² Michael Lyons, *Place-Shaping: A Shared Ambition for the Future of Local Government: Final Report* (Stationery Office 2007) 127-8.

⁵³ Sandford (n 19) 6-7; Section 72 Localism Act 2011.

⁵⁴ ‘[Composition of Average Band D Council Tax, by Year](https://stats.wales.gov.wales/Catalogue/Local-Government/Finance/Council-Tax/Levels/compositionofaveragebanddcounciltax-by-year)’ (Welsh Government 2022). <<https://stats.wales.gov.wales/Catalogue/Local-Government/Finance/Council-Tax/Levels/compositionofaveragebanddcounciltax-by-year>> accessed 10 May 2021.

annually and can be paid in a lump sum, it is usually paid in ten- or twelve-monthly instalments. A representative survey of citizens in Wales in 2022 indicated that 57% of individuals pay their council tax in ten monthly instalments and 30% in twelve monthly instalments, with 4% paying an annual lump sum and 3% paying weekly.⁵⁵ If an individual moves house during the financial year their council tax liability will be calculated on a daily rate. All households are issued with an annual bill, and it is their responsibility to contact their local authority to apply for an exemption, discount, or reduction where eligible. Council tax liability can also be subject to premiums.⁵⁶

EXEMPTIONS AND DISCOUNTS

Council tax is chargeable on all domestic properties unless the occupants are eligible for an exemption. There are twenty-four classes of exemption from council tax, the most common being dwellings occupied solely by students (16,610 dwellings in 2021/22).⁵⁷ This reflects the large student population across the nine higher education institutions of Wales.⁵⁸ The number of exemptions is also increasing; the Welsh Government introduced a new exemption in April 2019 for care leavers aged under twenty-five as a measure to ease the transition into independent living.⁵⁹ This new exemption was an interesting example of the relationship between local and national government in Wales, as a number of local authorities had previously offered exemptions for care leavers through their general discretionary powers to reduce bills in cases of hardship.⁶⁰ Local authorities asked the Welsh Government to introduce the blanket exemption to ensure consistency across Wales, and 646

⁵⁵ Mack and Owens (n 4) 9.

⁵⁶ These include premiums of 10-100% on long term empty properties or second homes. 'Council Tax Dwellings, by CT1 Row Description (Number of Dwellings)' (n 38). The introduction of new premiums on second homes in Wales has been controversial.

⁵⁷ 'Dwellings Exempt from Council Tax, by Local Authority and Class (Number of Dwellings)' (Welsh Government) <<https://statswales.gov.wales/Catalogue/Local-Government/Finance/Council-Tax/Dwellings/dwellingsexemptfromcounciltax-by-localauthority-class>> accessed 12 May 2021.

⁵⁸ In 2019/20 there were 124,055 students enrolled in Welsh universities, excluding Further Education Institutions and the Open University.

⁵⁹ 'Young Care Leavers to Be Exempt from Paying Council Tax' (Welsh Government 2019) <<https://gov.wales/young-care-leavers-be-exempt-paying-council-tax-0>> accessed 12 May 2021.

⁶⁰ Welsh Government (n 15) 56

households currently benefit from this exemption.⁶¹

The rate of council tax payable can also be reduced if the occupants are eligible for a discount. In 2021/22, 37% of households in Wales received one or more discounts on their council tax liability, the most common being a 25% discount for properties occupied by a single liable adult.⁶² A spill over from the community charge, the single person discount is often criticised as encouraging the inefficient use of housing, as it reduces the cost of living alone in a large property which could be better utilised by a family or multiple occupants. As explained by Adam et al: ‘with property scarce, a discount that makes it scarcer for those who most need space does not look like sensible policy.’⁶³ However, it should also be acknowledged that this discount does not only benefit sole occupiers, but households where only one adult is liable to pay council tax, such as single-parent family households.

COUNCIL TAX REDUCTION SCHEME

Some of the issues of affordability highlighted above are partially mitigated by the Council Tax Reduction Scheme (CTRS) currently available in Wales. The scheme in its current form is relatively new. Until 2012, provision was made across England and Wales for Council Tax Support (CTS), a welfare benefit funded by the UK Government which aimed to shield the lowest income households from full council tax liability. The Local Government Finance Act 2012 abolished CTS as part of wider welfare reforms, replacing it in England with Local Council Tax Support (LCTS), a system in which local authorities each design and administer their own scheme. This reflects the move towards localism and efforts to reduce public spending during austerity. Local authorities must decide whether to provide 100% discounts to the very lowest earners, as was available under CTS, or to set a minimum level of

⁶¹ ‘Dwellings Exempt from Council Tax, by Local Authority and Class (Number of Dwellings)’ (n 57).

⁶² Welsh Government (n 9) 56; ‘Council Tax Dwellings, by Local Authority and CT1 Row Description (Number of Dwellings)’ (Welsh Government 2022) <<https://statswales.gov.wales/Catalogue/Local-Government/Finance/Council-Tax/Dwellings/counciltaxdwellings-by-localauthority-ct1rowdescription>> accessed 21 May 2021.

⁶³ Adam et al (n 5) 19.

contribution regardless of circumstances. In April 2015, 249 of the 326 councils in England had introduced a minimum payment, the majority of which are below 30% of a full bill.⁶⁴ This means that the very lowest earners are in most cases still expected to make some contribution towards council tax in England.

As a result of the 2012 Act, Welsh Ministers were given the power to introduce CTRS. Unlike in England, CTRS in Wales is a national scheme funded and prescribed by the Welsh Government.⁶⁵ The level of support previously available under CTS was maintained by the Welsh Government and migration from CTS to CTRS was automatic. An individual in receipt of Job Seekers Allowance, Employment Support Allowance, Pension Credit, Income Support (now referred to collectively as legacy benefits), or Universal Credit, is likely to be eligible for the Council Tax Reduction Scheme, subject to a consideration of the value of any capital assets they may have.⁶⁶

CTRS in Wales is therefore more generous and more consistently applied than its equivalent LCTS in England. In 2019-20, 275,000 households benefited from CTRS in Wales at a cost of £269million. The majority of CTRS is applied to households in bands A and B and to those who rent their properties.⁶⁷ It is effective in shielding the lowest earning households from large council tax bills, but the scheme has struggled to achieve a full uptake from those who are eligible, with estimates that in 2018 only 55-65% of eligible households received a reduction.⁶⁸

⁶⁴ Eric Ollerenshaw, *Three Years On: An Independent Review of Local Council Tax Support Schemes*. (2016) 49-52.

⁶⁵ Ibid 18; Welsh Government (n 15) 12.

⁶⁶ 'Council Tax Discounts and Reduction: Low Income Households' (Welsh Government) <<https://gov.wales/council-tax-discounts-and-reduction/low-income-households>> accessed 24 May 2021.

⁶⁷ Jane Aston and others, 'Understanding the Impact of Universal Credit on the Council Tax Reduction Scheme and Rent Arrears in Wales: Final Report' (Welsh Government 2020) 47/2020 55-56.

⁶⁸ Ibid 47.

COLLECTION RATES

The proportion of council tax which local authorities collect in each financial year is one of the main measures of their performance. When decisions are made about appropriate enforcement methods for arrears the need to achieve the best possible collection rate will be a key motivation for local authorities. Every year, local authorities submit a Council Tax Collection Return to the Welsh Government who calculate the mean average collection rate for all of Wales which is published in annual reports.⁶⁹ This collection rate was steadily increasing year on year until 2018/19, when rates started to decline, as can be seen below in Table 3 and Figure 5. The most recent average collection rate for Wales was 96.3%, although this is likely to reflect the economic impact on individual taxpayers and their ability to maintain their council tax bills as a result of the COVID-19 pandemic. Given that enforcement action for council tax, including the use of enforcement agents, was suspended for significant periods during the COVID-19 pandemic,⁷⁰ it is perhaps surprising and quite significant to note that collection rates only fell by less than 2 two percentage points, and showed some recovery in 2021/22. It is also crucial to note that the collection rates do not show significant reductions in collection rates following the removal of committal in April 2019.

⁶⁹ 'Council Tax Collection Rates in Wales: 2020-21' (Welsh Government 2022) SFR 147/2022.

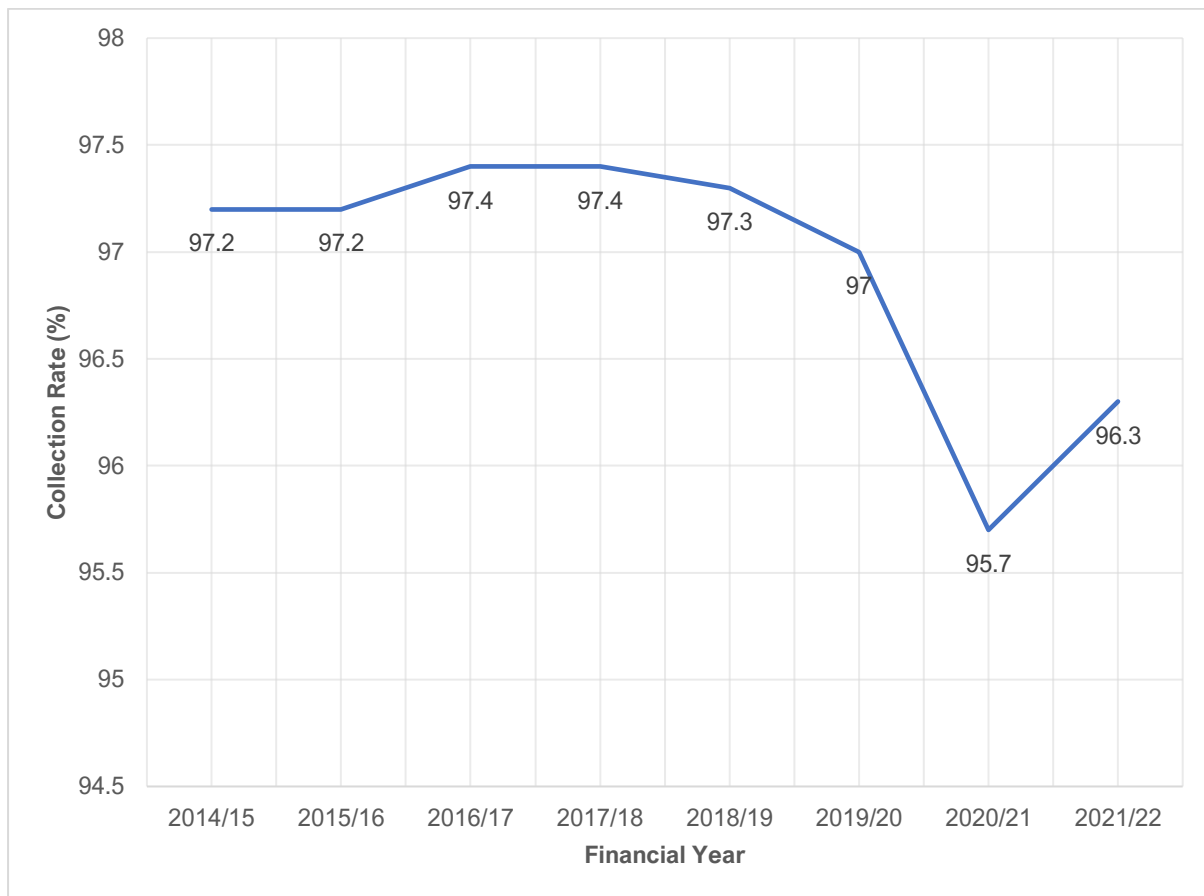
⁷⁰ The Civil Enforcement Association (CIVEA) issued a range of guidance for enforcement agents during the first COVID-19 lockdown and for enforcement post-lockdown (<https://www.civea.co.uk/covid-19-support>). In addition, statutory changes were made through the Taking Control of Goods and Certification of Enforcement Agents (Amendment) (Coronavirus) Regulations 2020, and individual local authorities made their own choices about when and how to carry out enforcement during this time.

Table 3 All Wales Average Collection Rates (2014-2022)⁷¹

| | |
|---------|------|
| 2014/15 | 97.2 |
| 2015/16 | 97.2 |
| 2016/17 | 97.4 |
| 2017/18 | 97.4 |
| 2018/19 | 97.3 |
| 2019/20 | 97 |
| 2020/21 | 95.7 |
| 2021/22 | 96.3 |

⁷¹ 'Council Tax Collection Rates in Wales: 2014-15' (Welsh Government 2015) SDR 89/2015; 'Council Tax Collection Rates in Wales: 2015-16 - Revised' (Welsh Government 2016) SDR 74/2016 (R); 'Council Tax Collection Rates in Wales: 2016-17' (Welsh Government 2017) SFR 62/2017; 'Council Tax Collection Rates in Wales: 2017-18' (Welsh Government 2018) SFR 47/2018; 'Council Tax Collection Rates in Wales: 2018-19' (Welsh Government 2019) SFR 43/2019; 'Council Tax Collection Rates in Wales: 2019-20' (Welsh Government 2020) SFR 124/2020; 'Council Tax Collection Rates in Wales: 2020-21' (n 69); 'Council Tax Collection Rates in Wales: 2021-22' (Welsh Government 2022) SFR 147/2022.

Figure 5 All Wales Average Collection Rates (2014-2022)⁷²



The deficit between total council tax bills and council tax collected has ranged between 2.6 and 4.3% between 2014 and 2022. To contextualise these collection rates, it is useful to compare with collection rates for other taxes or fees. In 2019/20 the tax gap for Income Tax, National Insurance contributions and Capital Gains Tax was 3.5%,⁷³ despite a large proportion of Income Tax and National Insurance contributions being deducted at source from wages. There are various forms of tax avoidance and evasion which contribute to this tax gap, but for the most serious cases of evasion imprisonment is used as a sanction. For television licences, non-payment of the annual fee by someone who uses a television receiver or watches content on BBC iPlayer is a criminal offence which will lead to the imposition of a

⁷² Ibid.

⁷³ Anthony Seely, 'Tax Avoidance and Tax Evasion' (House of Commons Library 2021) 13.

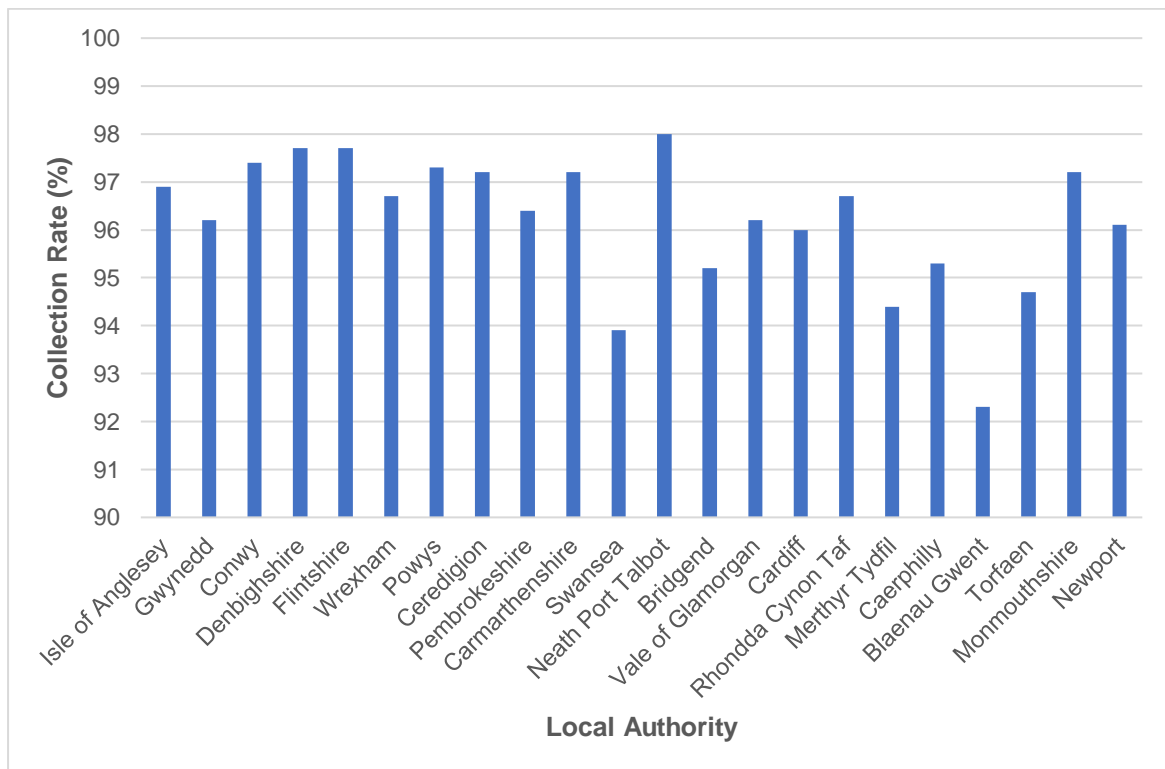
fine.⁷⁴ Non-payment of this fine can lead to imprisonment. In 2018/19 the television licence evasion rate in the UK was estimated to be 6.57%.⁷⁵

The annual average collection rates for council tax comprise the collection rates of the twenty-two local authorities of Wales. Neath Port Talbot had the highest collection rate of 98% in 2021/22, whereas Blaenau Gwent collected 92.3% of council tax billed, meaning collection rates most recently fell within a range of 5.7% across Wales, as shown below in Figure 6. Since 2014, the difference between collection rates of the best and worst performing local authorities has ranged between 3-6.5%, with the gap between the two generally increasing over time. The fact that all local authorities in Wales have the same enforcement powers demonstrates that other factors must influence collection rates in Wales.

⁷⁴ 'Consultation on Decriminalising TV Licence Evasion'
<<https://www.gov.uk/government/consultations/consultation-on-decriminalising-tv-licence-evasion/consultation-on-decriminalising-tv-licence-evasion>> accessed 15 October 2022.

⁷⁵ 'Consultation on Decriminalising TV Licence Evasion' (n 74).

Figure 6 Annual Collection Rates by Local Authority (%) 2021-22⁷⁶



Council tax collection is a significant administrative task for local authorities which must be accounted for in their annual revenue and capital expenditure budgets. Table 4 below shows the amount budgeted for local tax collection each year from 2014 to 2022. Figure 7 below compares the budgeted cost of local tax collection with the Wales average collection rate since 2014. We can see an inverse relationship between the budgeted cost of collections and the collection rate, meaning that collection rates tend to decrease in years where the collections budget increases, and vice versa. This budget encompasses all costs for council tax collection, from initial billing through to the most severe enforcement methods and is a budgeted rather than actual measure of expenditure, which means it has limitations as a statistical comparator. However, it highlights that there may be a point where increased expenditure on collections may not yield better enforcement rates, which should inform the economic rationale of local authorities. This trend changes during the financial years associated with the COVID-19 pandemic, the impact of which is

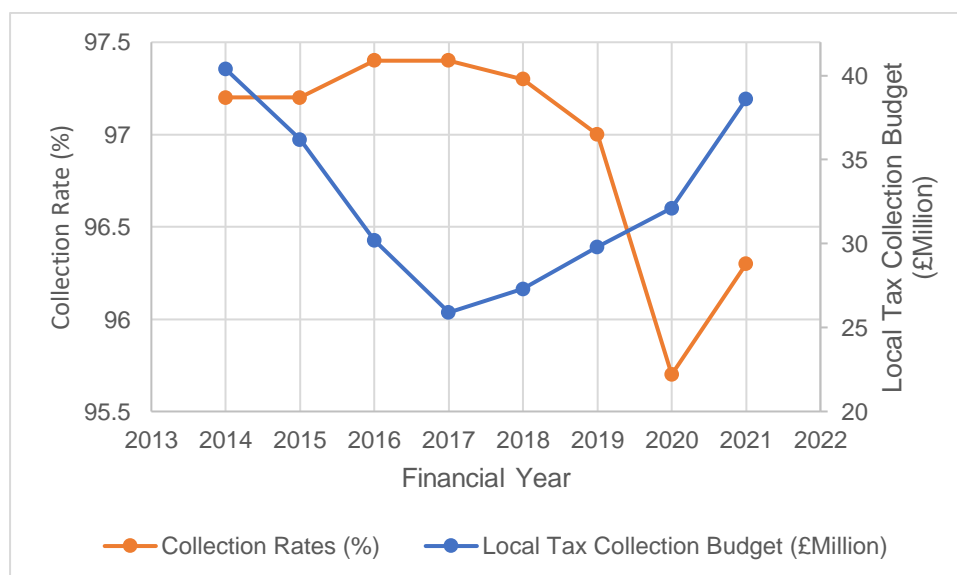
⁷⁶ 'Council Tax Collection Rates in Wales: 2021-22' (n 71).

more difficult to interpret based on these two statistical indicators.

Table 4 Local Tax Collection Budget 2014-2022⁷⁷

| Financial Year | Cost of Local Tax Collection (£Million) |
|----------------|-----------------------------------------|
| 2014/15 | 40.4 |
| 2015/16 | 36.2 |
| 2016/17 | 30.2 |
| 2017/18 | 25.9 |
| 2018/19 | 27.3 |
| 2019/20 | 29.8 |
| 2020/21 | 32.1 |
| 2021/22 | 38.6 |

Figure 7 Comparison of Annual Local Tax Collection Budget (£Million) and Annual Council Tax Collection Rates 2014-2022 (%)⁷⁸



⁷⁷ Ibid (n 71, n 77).

⁷⁸ Ibid.

From the figures presented above we can see that council tax represents both a significant household expense and a crucial revenue source for local authorities in Wales. This highlights a need for academic research in this area, as identified by Ifan and Sion:

As council tax becomes an ever more important component of local government financing, issues around its fairness and appropriateness as a tool for funding local services need to be considered.⁷⁹

THE LEGAL FRAMEWORK OF COUNCIL TAX COLLECTION AND ENFORCEMENT

As outlined in the introduction, the power of local authorities in Wales to pursue committal of council tax debtors was removed by amendment to the regulations with effect from April 2019.⁸⁰ The following section will explore the legal framework of council tax enforcement prior to the removal of committal. A greater understanding of the reasons why committal was used demands an appreciation of the steps which preceded its use and why they were unsuccessful. Committal could not be used unless all other enforcement options had been attempted and failed, which means it was intrinsically linked to and contingent upon the ineffectiveness of other methods. In addition, the removal of committal as an option will shift focus onto existing or novel enforcement methods which may be used at different rates or in different ways, as local authorities in Wales attempt to maintain the high collection rates discussed above. New methods will build upon or extend the existing framework.

Although it is fair to say that enforcement practices vary between local authorities in Wales, the actions of all twenty-two were enabled and restricted by the legal provisions of the Council Tax (Administration and Enforcement) Regulations 1992,⁸¹

⁷⁹ Ifan and Sion (n 17) 16.

⁸⁰ The Council Tax (Administration and Enforcement) (Amendment) (Wales) Regulations 2019, SI 2019/220 (W 50); Rheoliadau'r Dreth Gyngor (Gweinyddu a Gorfodi) (Diwygio) (Cymru) 2019, SI 2019/220 (Cy 50).

⁸¹ The Council Tax (Administration and Enforcement) Regulations 1992, SI 1992/613, hereafter 'CT(AE)R 1992'.

as enacted under Paragraph 8, Schedule 4 of the Local Government Finance Act 1992.⁸² This style of legislative framework can be traced back to the community charge whereby ‘skeleton legislation with regulations to fill the gaps’ is introduced, deferring control from Parliament to ministers and civil servants to make amendments through statutory instruments.⁸³ The regulations equipped local authorities with a range of options to enforce payment of arrears. These enforcement methods varied significantly in their nature and severity, from routine correspondence to threats to the ‘fundamental rights of the debtor’.⁸⁴ In the remainder of this chapter, I will consider each option in the order in which they were typically used by local authorities, reflecting on their frequency of use and their advantages and disadvantages.

It is important to note at the outset that the frequency of use of each enforcement method should be considered only one part of the picture for anyone researching this area of law. This thesis will advocate for the need for qualitative research on the enforcement of council tax arrears and debts more broadly, focused on the processes and assumptions which lead to certain legal outcomes. However, there is an unacceptable lack of publicly available data on the rates at which each enforcement method is used by local authorities. In the following sections I refer to figures from the 2016/17 financial year which are drawn from local authority benchmarking data which were made available only for that year. This lack of access to data reduces the transparency of decisions taken by local authorities and, as I will argue in Chapter Two, has meant that policy in this area has been informed by unreliable and biased data and statistics.

AWARENESS OF LIABILITY

In line with the general legal principle of certainty, local authorities cannot take advantage of enforcement methods unless they have previously communicated the

⁸² Local Government Finance Act 1992, hereafter ‘LGFA 1992’.

⁸³ Murdie and Wise (n 8) 8.

⁸⁴ Murdie and Wise (n 8) 3.

obligation to pay council tax to all taxpayers. Local authorities are required under Regulation 18⁸⁵ to supply all taxpayers with a demand notice which sets out their annual council tax liability and the cost of monthly instalments, prior to the start of the new financial year, or in-year where an individual has moved to a new property. The full council tax bill assumes that there are two adults living in a dwelling.⁸⁶

Householders can challenge their bill if they feel it is inaccurate or submit evidence to the local authority in support of an exemption, discount, or reduction, as considered in Part One of this chapter. Even where a full exemption has been secured, bills are sent to all taxpayers; this could be seen as an attempt to make individuals 'aware of their cost to the community' by providing details of what their bill would have been without their exemption.⁸⁷

INITIAL MISSED PAYMENT

Where an instalment is missed, provided the authority has served an original demand notice and the amount is still payable, they can serve a reminder notice on the individual.⁸⁸ In 2016-17, 439,944 reminder notices were issued by Welsh local authorities.⁸⁹ Although this may include repeat reminder notices to the same household in one year, it is nonetheless a significant proportion of the 1,396,860 taxable dwellings in Wales,⁹⁰ suggesting that falling behind with council tax is common.

The reminder notice should clearly state the amount to be paid and the potential further consequences of non-payment. At this stage we see the first example of local authorities threatening more severe action to encourage taxpayers to address their

⁸⁵ CT(AE)R 1992.

⁸⁶ 'Council Tax Dwellings in Wales, 2019-20' 10.

⁸⁷ Murdie and Wise (n 8).

⁸⁸ CT(AE)R 1992, reg 23.

⁸⁹ Sharon Collard, Helen Hodges and Paul Worthington, 'Responding to Citizens in Debt to Public Services' (Wales Centre for Public Policy 2019) 11. More recent data on the frequency of use of each enforcement method is not available as local authorities in Wales are not required to make this information publicly available. Data on enforcement methods used from 2016/17 is likely to reflect enforcement action taken for arrears of council tax in previous financial years.

⁹⁰ 'Council Tax Dwellings, by Local Authority and CT1 Row Description (Number of Dwellings)' (n 38) – this is the total number of chargeable dwellings in the 2021/22 tax year.

arrears. These consequences vary depending on whether the individual has received another reminder notice in that tax year. For a first missed payment, where the instalment remains unpaid for a further seven days following the service of a reminder notice, the remaining *annual* balance will become payable after the expiry of a further fourteen days.⁹¹ Where the individual has received a previous reminder notice that year and proceeds to miss any further instalments following the issuing of a second reminder notice, the full annual balance will become payable within one day of the missed payment.⁹² For an average Band D household, this could mean the difference between owing one month's and one year's liability; as little as £144 or as much as £1,730.98. Most individuals who fall behind with payments can catch up at this stage, without the need for more formal enforcement action.⁹³

LIABILITY ORDER

Although householders are under a statutory obligation to pay their council tax, for an authority to enforce payment of any arrears beyond mere correspondence they must secure an order from the Magistrates' court. A liability order does not have the legal status of a judgment, and therefore does not have any effect on credit rating systems,⁹⁴ unlike utilities, where non-payment of arrears can result in a County Court Judgment.⁹⁵ Where the arrears have not been paid following the issuing of a reminder notice, authorities must serve a final notice on the individual which must state the total amount owed (or amounts where more than one property is concerned).⁹⁶ In 2016-17, 88,308 final notices were issued by Welsh local authorities.⁹⁷ A further window of seven days is allowed for repayment, following

⁹¹ CT(AE)R 1992, reg 23(3).

⁹² CT(AE)R 1992, reg 23(4). Although it does not apply to local authorities, it is interesting to note that this practice would be inconsistent with the Financial Conduct Authority Handbook which applies to all banks, insurers, investment businesses and other financial services. Under rule 7.3.10, a firm must not pressurise a customer to pay a debt in one single or very few repayments or in unreasonably large amounts, when to do so would have an adverse impact on the customer's financial circumstances. Financial Conduct Authority, 'Chapter 7: Arrears, Default and Recovery (Including Repossessions)', *Consumer Credit Sourcebook* (2014).

⁹³ Collard, Hodges and Worthington (n 89) 10.

⁹⁴ Murdie and Wise (n 8) 2.

⁹⁵ Murdie and Wise (n 8) 2.

⁹⁶ CT(AE)R 1992, reg 33.

⁹⁷ Collard, Hodges and Worthington (n 89) 11.

which an authority is permitted to apply to the Magistrates' court for a liability order.⁹⁸ The application is made by complaint to a justice of the peace requesting the issue of a summons directed to that person to appear before the court to show why he has not paid the sum which is outstanding.⁹⁹ Each application imposes a fee on the local authority which is capped at £70 in Wales.¹⁰⁰ To be considered valid the summons can be delivered to the debtor directly, left at or posted to their usual or last known address.¹⁰¹ It is unclear how many individuals respond to these summonses by attending court, but Murdie and Moorhouse suggest that in most cases summonsed individuals do not attend.¹⁰²

If, at this stage, the individual makes payment of both the full outstanding sum and the costs reasonably incurred by the local authority in seeking the liability order, the authority is required to accept this payment and not proceed with the liability order.¹⁰³ However, evidence suggests that some local authorities proceed to obtain the liability order notwithstanding payment arrangements so that post-liability order enforcement methods can be used if the individual subsequently falls back into arrears.¹⁰⁴ This is an example of a strict interpretation of the regulations which may not in reality be conducive to the long-term resolution of arrears; although permissible within the regulations, individuals in arrears who make contact to agree an affordable repayment arrangement may feel unfairly penalised if they are still faced with a liability order.

In consideration of an application for a liability order, the test to be applied by the magistrates' court is fairly straightforward; they must be satisfied on consideration of the evidence of the local authority that the sum has become payable by the

⁹⁸ CT(AE)R 1992, reg 34.

⁹⁹ CT(AE)R 1992, reg 34(2).

¹⁰⁰ The Council Tax and Non-Domestic Rating (Amendment) (Wales) Regulations 2011, SI 2011/528 (W 73), reg 3; Rheoliadau'r Dreth Gyngor ac Ardrethu Annomestig (Diwygio) (Cymru) 2011, SI 2011/528 (Cy 73), reg 3.

¹⁰¹ CT(AE)R 1992, reg 35(2).

¹⁰² Alan Murdie and Paul Moorhouse, *Council Tax Handbook* (12th edn, Child Poverty Action Group 2018) 202.

¹⁰³ CT(AE)R 1992, reg 34(5).

¹⁰⁴ Ceri Greenall, Nina Prosser and Hannah Thomas, 'Local Authorities' Approaches to Council Tax Debt Recovery in Wales' (Welsh Government 2017) 57/2017 49.

defendant and has not been paid.¹⁰⁵ They can then proceed to issue the liability order which can include both the arrears of council tax accrued and the reasonable costs of the local authority in applying for the order.¹⁰⁶ This is therefore the first stage at which the individuals overall debt will begin to increase to compensate the local authority for their enforcement costs. In 2016-17, Welsh Magistrates' courts granted 92,547 liability orders relating to council tax arrears.¹⁰⁷ A standard template of a liability order can be seen in Appendix One.

Given the high volume of applications for liability orders, and the significant number of court closures in Wales,¹⁰⁸ it is assumed that only a brief amount of time is available for consideration of each application, and they are likely to be processed in batches for efficiency, with limited time for scrutiny of documentation. Murdie and Moorhouse suggest that liability orders are merely 'issued by computer and endorsed with a facsimile signature of a justice of the peace.'¹⁰⁹ Given that a liability order acts as a gateway to much more invasive enforcement methods, this lack of scrutiny is problematic, but an understandable consequence of high volumes of cases and limited judicial resources.

The issuing of a liability order creates some statutory obligations on the debtor to supply relevant information to the local authority where it is in their possession, has been asked for in written correspondence from the authority, and is of a prescribed nature.¹¹⁰ Such information broadly relates to disclosure of any potential sources of income which could be channelled towards repayment of their arrears.¹¹¹ This includes contact details for any employers, details of current or anticipated earnings taking account of any relevant deductions from said earnings, employment

¹⁰⁵ CT(AE)R 1992, reg 34(6).

¹⁰⁶ CT(AE)R 1992, reg 34(6).

¹⁰⁷ Collard, Hodges and Worthington (n 89) 11. The number of liability orders issued in 2016/17 is higher than the recorded number of final notices. This is likely to be as a result of additional liability orders sought in relation to council tax arrears in previous financial years.

¹⁰⁸ UK Parliament, House of Commons Library (2020) Data Dashboard: Constituency data: Magistrates' court closures. <https://commonslibrary.parliament.uk/constituency-data-magistrates-court-closures/>.

¹⁰⁹ Murdie and Moorhouse (n 102) 201.

¹¹⁰ CT(AE)R 1992, reg 36.

¹¹¹ CT(AE)R 1992, reg 36(3).

identification numbers and details of any other person who is jointly or severally liable for the debt in question.¹¹² Failure to provide information or the supply of false information in response to a request is an offence and may render the debtor liable on summary conviction to a fine at level two or three.¹¹³ This statutory obligation to provide information reflects the fact that local authorities at this stage, and beyond, may know very little about the debtor's circumstances, or the reasons for their arrears. There is no current data available on action taken by local authorities for breach of this statutory obligation. The fact that local authorities may not pursue fines for failure to provide information may suggest that they perceive it more cost-effective to instruct enforcement agents to visit debtors, in the hope of bringing to light the information they need.

ATTACHMENT ORDERS – INCOME FROM EMPLOYMENT

If a local authority can obtain information about a debtor's employment status, the next step is likely to be an attachment of earnings order permitted under Regulation 37.¹¹⁴ This is a way in which the authority can ensure a claim to any earnings the debtor may receive through regular deductions from their income at source, arranged by their employer. In 2016-17, 18,961 attachment orders were used by Welsh local authorities.¹¹⁵ Provided the authority have the details of any employer of the debtor they can seek such an arrangement without the debtor's consent.¹¹⁶ Employers can deduct £1 from the debtor's wages on each occasion that a

¹¹² CT(AE)R 1992, reg 36(3).

¹¹³ CT(AE)R 1992, reg 56.

¹¹⁴ CT(AE)R 1992.

¹¹⁵ Collard, Hodges and Worthington (n 89).

¹¹⁶ Although attachment orders can resolve arrears quickly, problems frequently arise when a debtor leaves or transfers employment. To address such eventualities, the regulations include obligations on former employers, new employers, and the debtor. A former employer must notify the relevant local authority that the debtor has left their employment within fourteen days (reg 39(4) and (5)). Similarly, if a new employer of the debtor is aware that an attachment order is in force and is aware of the relevant local authority who sought the order it must notify that authority of its employment of the debtor within fourteen days of acquiring this knowledge (reg 39(6) and (7)). Whenever the debtor leaves or transfers employment the obligations under reg 36 above are reset and they must notify the local authority in writing to confirm their new earnings, any deductions, the name and address of their employer and employment identification numbers to enable the authority to reinstate the attachment order and recoup the remainder of the arrears.

deduction for council tax repayment is made, to cover their administrative costs.¹¹⁷

In line with the more flexible forms of work in the modern age, the regulations make provision for payments at monthly or weekly intervals and for more irregular payment arrangements.¹¹⁸ Employer advances are also covered,¹¹⁹ highlighting the intention of the local authority to stake a claim on any exchange of wages. The relevant figures used in the regulations are net income,¹²⁰ meaning that attachment orders have last priority in relation to income tax, national insurance, pension contributions, repayment of student loans and other deductions.

There are limitations to the amount of the debtor's income which can be deducted in service of their council tax arrears.¹²¹ In relation to monthly pay, the minimum income to incur deductions is £35 per week.¹²² The system is then scaled so that a debtor earning between £35 and £250 per week will suffer deductions of between 3-17%. Anything earned over £250 per week will be subjected to 50% deductions. To put these limits into context, the Office for National Statistics reported in 2020 that the median average full-time employee in Wales earns £537.80 per week gross.¹²³ Although it is acknowledged that those in council tax arrears may not be average earners, assuming a net pay of £436 per week (deducting only income tax and National Insurance), deductions would amount to £135.50 per week. Attachment of earnings can therefore be a highly efficient method of recouping arrears at source, but only for debtors who receive their income through the Pay-As-You-Earn (PAYE) system of national income tax. It is not suitable for self-employed debtors. Some suggest that such an effective collections method should be available at the pre-liability order stage, as some individuals in arrears may prefer to make payments

¹¹⁷ CT(AE)R 1992, reg 39.

¹¹⁸ CT(AE)R 1992, reg 38(1).

¹¹⁹ CT(AE)R 1992, reg 38(2).

¹²⁰ CT(AE)R 1992, reg 38(8).

¹²¹ CT(AE)R 1992, reg 38; sch 4.

¹²² CT(AE)R 1992, sch 4, Table B.

¹²³ 'Average (Median) Gross Weekly Earnings by UK Country - English Region and Year (£)' (Welsh Government 2020) <<https://statswales.gov.wales/Catalogue/Business-Economy-and-Labour-Market/People-and-Work/Earnings/medianweeklyearnings-by-ukcountryenglishregion-year>> accessed 25 May 2021.

through this method but cannot do so without incurring the formality and additional cost of being the subject of a liability order.¹²⁴

Despite their efficiency, local authorities who secure an attachment order are unlikely to know or fully appreciate the impact such significant deductions will have on the household finances, with the potential for high council tax repayments to cause new debts in other forms. Attachment orders are also frequently criticised because the level of deductions is based purely on the individual's income to the exclusion of their outgoings.¹²⁵ They therefore do not account for debtors with high outgoings, such as households with large families and dependent children, or individuals with disability-related costs. This is to some extent a criticism which can be made of the entire council tax system in that, as set out in Part One, the level of liability does not necessarily have any connection to household affordability. Given the increasing cost of living in relation to the cost of food, fuel and energy, these deductions may become more difficult to accommodate.

ATTACHMENT ORDERS – INCOME FROM SOCIAL SECURITY

As considered above, individuals in council tax arrears may not be average earners; many may be unemployed or working part-time, receiving legacy benefits or Universal Credit. However, lack of employment income does not prevent a local authority setting up an attachment order for other sources of income such as welfare benefits. Such orders are often referred to as third party deductions; they constitute a mandate authorised by the Secretary of State for a set amount to be deducted at source from benefits which the individual debtor is eligible for and in receipt of at that time.¹²⁶ In 2016-17, 16,673 attachment to benefits orders were used by local authorities in Wales, making them nearly as frequently used as attachments to

¹²⁴ Greenall, Prosser and Thomas (n 104) 53.

¹²⁵ Greenall, Prosser and Thomas (n 104) 52.

¹²⁶ The Council Tax (Deductions from Income Support) Regulations 1993, SI 1993/494; The Social Security (Claims and Payments) Regulations 1987, SI 1987/1968.

employment earnings.¹²⁷

Local authorities can seek deductions from Income Support, State Pension Credit, Jobseeker's Allowance, Employment and Support Allowance and, most recently, Universal Credit.¹²⁸ The authority must apply to the Secretary of State, who may grant an order if the amount payable to that individual in arrears, after any deduction in relation to council tax, is ten pence or more.¹²⁹ Each deduction will be five per cent of the personal allowance for the relevant benefit.¹³⁰ One individual may be subject to three different forms of this kind of order, providing the aggregate deductions do not exceed fifteen per cent of that benefit income.¹³¹ Similar orders are used for recovery of arrears in relation to housing costs as well as utilities.

Attachments to benefits can be complex, particularly where there are multiple orders in place. To give an example, a single person aged over 25 years would in 2021 be entitled to £411.51 per month in Universal Credit.¹³² If the local authority sought an attachment to benefits order, the Secretary of State could deduct £20.57 per month from their Universal Credit entitlement to repay council tax arrears. If the individual was subject to multiple orders, the maximum deduction from Universal Credit would be £61.73, or fifteen per cent of their monthly entitlement.¹³³

As considered above, attachment orders provide a regular source of arrears repayment for the authority but the potential negative influence on the household is heightened in comparison to those with employment income. By their nature, the benefits which are available for deductions are calculated to provide minimum living standards for the individual with very little if any buffer for additional expenses, or the increasing cost of living. As set out in Part One, individuals on the lowest incomes are

¹²⁷ Collard, Hodges and Worthington (n 89) 11.

¹²⁸ The Council Tax (Deductions from Income Support) Regulations 1993, SI 1993/494, reg 2.

¹²⁹ The Council Tax (Deductions from Income Support) Regulations 1993, SI 1993/494, reg 4(2).

¹³⁰ The Council Tax (Deductions from Income Support) Regulations 1993, SI 1993/494, reg 5.

¹³¹ The Council Tax (Deductions from Income Support) Regulations 1993, SI 1993/494, reg 5(c).

¹³² 'Universal Credit' (GOV.UK) <<https://www.gov.uk/universal-credit/what-youll-get>> accessed 25 May 2021.

¹³³ Applying The Council Tax (Deductions from Income Support) Regulations 1993, SI 1993/494, reg 1A.

likely to be eligible for the Council Tax Reduction Scheme which will reduce their liability. This enforcement method highlights the extent to which local authorities go to recover arrears from those on the most modest of incomes. Research by Graven highlights the impact of these deductions; in a sample of thirty-seven individuals subject to attachment to benefit orders, twenty-five reported that the substantial deductions contributed to their accruing of debts, creating a self-fulfilling prophecy.¹³⁴

TAKING CONTROL OF GOODS

In circumstances where attachment orders are not possible or practicable for the local authority, their focus moves from identifying income to taking control of goods for sale. Previously known as exercising distress against the debtor¹³⁵, local authorities have the discretion to instruct enforcement agents, formerly known as bailiffs, to attend at the home of debtors to secure repayment of arrears by taking control of suitable goods and selling them, usually at auction. Although the purpose of an enforcement agent is to take control of goods for sale, in actuality sale of goods is quite rare; most debtors visited by an enforcement agent will find money from some source to repay their arrears to avoid the removal of their possessions.¹³⁶ Enforcement agents can agree repayment arrangements with the debtor if authorised by the local authority they act for, meaning that their instruction is primarily a form of coercion of the debtor to make payment in the majority of cases. Local authorities most commonly use private firms of enforcement agents; individual agents may be self-employed contractors or employed by external firms, with some local authorities requiring that agents be employees. Rock notes the effect of the shift in personnel at this stage of enforcement: 'the important symbolic value of the change of heading on the dunning letters to that of the stigmatizing name of a firm of debt collectors.'¹³⁷ Perhaps because of these negative associations, and the

¹³⁴ Arianne Graven, 'Universal Credit and Third Party Deductions: The Rule and Their Impact on Claimants' (2021) 20 Social Policy & Society 33, 40.

¹³⁵ Prior to 2007, this process was dictated by reg 45, sch 5 CT(AE)R 1992.

¹³⁶ Murdie and Wise (n 8) 219.

¹³⁷ PE Rock, 'Observations on Debt Collection' (1968) 19 The British Journal of Sociology 176, 181.

increased awareness of the need to recognise debtor vulnerability,¹³⁸ in recent years many local authorities in Wales have ceased using external enforcement agents and now employ their own in-house agents to complete this work.¹³⁹

The rules which apply to the process of taking control of goods are set out in primary legislation,¹⁴⁰ the detail and specific procedures of which are contained within statutory instruments.¹⁴¹ The regulations set out positive rights of action for the enforcement agent as well as limitations on their powers and minimum expectations of their conduct. For example, Regulations 6, 7 and 8 provide detailed requirements as to notice of the intention of the enforcement agent to attend the debtor's property to take control of goods, providing the debtor with an opportunity to seek advice about the threat of such action.¹⁴² There are also restrictions on the possessions which an enforcement agent can legally take control of; an enforcement agent would act *ultra vires* if he were to take control of, for example, equipment needed for employment, trade or study, essential fixtures and chattels such as clothing, bedding and appliances for cooking, or items reasonably required for the care of children or disabled persons.¹⁴³ Despite the considerable power afforded to enforcement agents to take control of goods, the statutory framework goes some way to protect the debtor's minimum standard of living.

The arrival of an enforcement agent at the debtor's property may be the first direct engagement with the debtor and their circumstances during the enforcement process. The information communicated to local authorities by their enforcement agent is therefore crucial, particularly in relation to debtors who may be vulnerable. Enforcement agents are restricted from taking control of goods where they

¹³⁸ Jennie Bunt, 'Defining Vulnerability in the Enforcement of Public Debts' (*UKAJI: The UK Administrative Justice Institute*, 26 February 2019); Jennie Bunt, 'Defining "Vulnerability" in the Enforcement of Public Debts – The Justice Gap' (13 November 2018) <<https://www.thejusticegap.com/defining-vulnerability-in-the-enforcement-of-public-debts/>> accessed 6 December 2018.

¹³⁹ Greenall, Prosser and Thomas (n 104) 81.

¹⁴⁰ The Tribunals, Courts and Enforcement Act 2007.

¹⁴¹ The Taking Control of Goods Regulations 2013, SI 2013/1894.

¹⁴² The Taking Control of Goods Regulations 2013, SI 2013/1894, regs 6, 7, 8.

¹⁴³ The Taking Control of Goods Regulations 2013, SI 2013/1894, regs 4, 5.

encounter a household where the only person present is a child or vulnerable person.¹⁴⁴

The number of instructions to take control of goods dwarfs that of all forms of attachment order; this method was used in 55,151 cases in Wales in 2016-17¹⁴⁵, making a local authority enforcement contract highly lucrative for private enforcement agents. The fees that such external agents are permitted to charge for their services are prescribed in supplementary regulations.¹⁴⁶ The process of taking control of goods is sub-divided into three stages (compliance, enforcement and sale or disposal)¹⁴⁷ with corresponding fixed fees and percentage-based fees.¹⁴⁸ If the arrears are paid at the compliance stage there will be no need for further action by the enforcement agent and therefore no prospect of additional income from fees, creating something of a conflict of interests with the business undertaking the enforcement action. These provisions also deal with the order of priority for repayment if sums are recovered by the enforcement agent, as by this stage a range of actors may have been involved in processing the debtor's property and require payment, such as auctioneers and storage providers.

As will be seen in the next chapter, the use of enforcement agents has been one of the most controversial aspects of council tax enforcement in recent years.

BANKRUPTCY AND PROPERTY CHARGES

Bankruptcy petitions are used much more widely in commercial debt recovery but are rare for council tax arrears most likely because of the minimum debt threshold of £5,000 and the considerable fee of approximately £700. Only four petitions were

¹⁴⁴ The Taking Control of Goods Regulations 2013, SI 2013/1894 reg 10.

¹⁴⁵ Collard, Hodges and Worthington (n 89) 11.

¹⁴⁶ The Taking Control of Goods (Fees) Regulations 2014, SI 2014/1.

¹⁴⁷ The Taking Control of Goods (Fees) Regulations 2014, SI 2014/1, reg 5.

¹⁴⁸ These fees have not risen since they were set in 2014, which has created conflict between the Ministry of Justice and the enforcement agent industry. In order to avoid creating an incentive for enforcement agents to escalate enforcement action beyond the compliance stage, these fees need to be kept at an adequate level. The Ministry of Justice are currently undertaking a public consultation on fee reforms.

issued in Wales in 2016-17.¹⁴⁹

Local authorities can apply for an order imposing a charge which secures the amount owed on any beneficial interest held by the debtor in the property to which the council tax arrears relate to.¹⁵⁰ This option will not allow quick recovery of the arrears and is a long-term option only suitable for taxpayers who own their own home and have minimum arrears of £1,000. This option necessitates the local authority having reasonable knowledge about the ownership of the property which may require correspondence with and fees payable to the Land Registry of England and Wales. The beneficial interest which the charging order provides to the local authority can only be realised on the sale of the property in question. Perhaps because of these numerous requirements, only 178 charging orders were granted in 2016-17.¹⁵¹

Charging orders are perhaps most interesting because of the detailed factors which magistrates must consider in compliance with the regulations. According to Regulation 51(1),¹⁵² in deciding whether to make a charging order, the court must consider all the circumstances of the case, any evidence before it as to the personal circumstances of the debtor, and whether any other person would be likely to be unduly prejudiced by the making of the order. These wider statutory considerations of the debtor's circumstances were not mirrored in the regulations for the most serious enforcement method of committal.

WRITE OFF

Given the severity of committal as a sanction, local authorities had to carefully consider whether to pursue this form of enforcement. They did not have to seek a warrant of committal if it was not appropriate to do so in their judgement, but, save for further attempts to take control of goods which would incur more fees, their only

¹⁴⁹ Collard, Hodges and Worthington (n 89) 11.

¹⁵⁰ CT(AE)R 1992, reg 50.

¹⁵¹ Collard, Hodges and Worthington (n 89) 11.

¹⁵² CT(AE)R 1992.

other option would have been, and now is, to write off the debt. Table 5 and Figure 8 below present the amounts written off in total by local authorities in Wales between 2014 and 2022.

Table 5 Amount Written Off by Local Authorities in Wales (£Million) 2014-2022¹⁵³

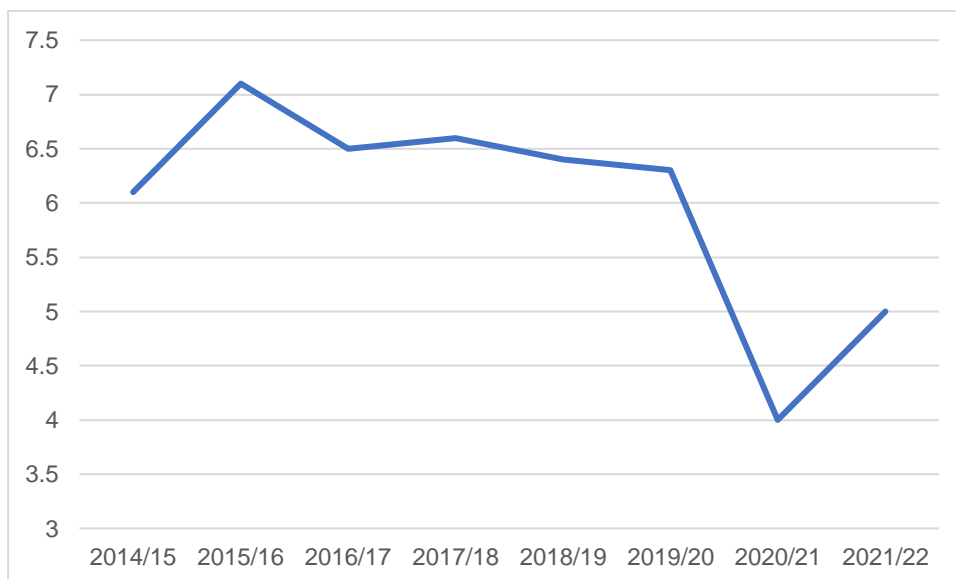
| Financial Year | Amount Written Off (£Million) |
|-----------------------|--------------------------------------|
| 2014/15 | 6.1 |
| 2015/16 | 7.1 |
| 2016/17 | 6.5 |
| 2017/18 | 6.6 |
| 2018/19 | 6.4 |
| 2019/20 | 6.3 |
| 2020/21 | 4.0 |
| 2021/22 | 5.0 |
| Total | £48 Million |

As can be seen in Table 5, between 2014-2022 local authorities in Wales used their statutory powers to write off £48million in council tax arrears. In the six years prior to the removal of committal, local authorities wrote off an average of £6.5million in arrears each financial year, but since the removal of committal the two-year average has been £4.5million.¹⁵⁴ During the COVID-19 pandemic, when enforcement action was suspended for significant periods, it would not have been surprising to see greater levels of debt write-off by local authorities, but this was not the case, raising the question of how much enforcement matters in respect of collection rates.

¹⁵³ Ibid (n 71).

¹⁵⁴ These figures may have been influenced by the emergency funding provided to local government between 2020-22 as additional support during the COVID-19 pandemic, including a local council tax support grant. <https://www.gov.uk/government/publications/covid-19-emergency-funding-for-local-government>.

Figure 8 Amount Written Off by Local Authorities in Wales (£Million) 2014-2022¹⁵⁵



The value of write-offs peaked in 2015/16, when £7.1million in arrears were written off. These figures include in-year and historical arrears, meaning that this peak may represent decisions by local authorities to write off a large block of historical arrears.

COMMITTAL

Where taking control of goods had been attempted but had proven unsuccessful because the enforcement agent was unable to find any or sufficient goods on which to levy the arrears amount, for any reason, a local authority was afforded the right to apply to the Magistrates' court for the issue of a warrant committing the debtor to prison.¹⁵⁶ Therefore, an authority who approached the court for a warrant without evidence of attempts to take control of goods would have had their application rejected.

¹⁵⁵ Ibid (n 71).

¹⁵⁶ CT(AE)R 1992, reg 47(1).

If the court accepted the application, they could not conduct a hearing without at least two justices present.¹⁵⁷ Relative to the high number of liability orders issued in Wales, the proportion of debtors who found themselves with persisting arrears at this stage was small. In 2016-17, 326 applications for committal were made by Welsh local authorities, which equates to approximately 0.35% of those who were subject to a liability order in that year, with 20 individuals actually imprisoned.¹⁵⁸ As with earlier enforcement methods, reasonable costs incurred by the authority in seeking an application for committal could be added to the arrears of the individual.¹⁵⁹

A crucial part of the regulations is contained in subsection (2) of Regulation 47, which sets out the legal test that was applied by the Magistrates' court during a committal hearing:

On such application being made the court shall (in the debtor's presence) inquire as to his means and inquire whether the failure to pay which has led to the application is due to his wilful refusal or culpable neglect.¹⁶⁰

This short sub-section contains several legal tests and concepts, but, on the face of it, it is not entirely clear how they interact. Understandably, such issues arose as the basis of claims and appeals when such matters came to court (considered in Chapter Five), but the focus of the following sections will be to analyse the legislation on a *prima facie* basis.

First in order of appearance is a statutory requirement for the debtor to be in attendance at the committal hearing. Further details relating to attendance are set out in Regulation 48(5),¹⁶¹ which states that the magistrates may issue a summons for the debtor to appear and if he fails to do so they may issue a warrant for his

¹⁵⁷ CT(AE)R 1992, 53(2).

¹⁵⁸ Collard, Hodges and Worthington (n 89).

¹⁵⁹ CT(AE)R 1992, 46(4).

¹⁶⁰ CT(AE)R 1992, 47(2).

¹⁶¹ CT(AE)R 1992.

arrest.

Secondly, there is a requirement that the court conduct an assessment of means. No further details are given regarding the focus of the inquiry or what evidence will be required or accepted. It is not clear whether the scope of the inquiry would be limited only to a consideration of income, or whether a full budget would be compiled including outgoings to assess whether any surplus income is available for repayment of the council tax arrears.

Within this regulation, consideration is given to circumstances as well as issues of conduct. The concepts of wilful refusal and culpable neglect, however, seem to relate to the individual's past actions during the history of the arrears. This introduces a hybridity into the proceedings which makes its purpose unclear; is the hearing an opportunity to consider options to resolve the arrears once and for all, or to assess the past conduct of the individual as a source of justification for the sanction of committal? Regulation 48(5),¹⁶² which relates to the summons process for the debtor to attend the hearing, refers to the purpose of the summons as an inquiry "as to the debtor's *conduct* and *means*". The suggested standard template for warrants of committal (included in Appendix One) refers to a means inquiry followed by consideration of wilful refusal and culpable neglect, but then goes on only to state that the failure to pay was due to wilful refusal or culpable neglect, failing to identify how the means inquiry influenced the proceedings or even what its specific purpose was. The test does not seem to be staged or expressly contingent on earlier parts.

As in the warrant template, the next subsection of the regulations omits to mention the means inquiry, and refers only to the concepts of wilful refusal and culpable neglect:

¹⁶² CT(AE)R 1992.

If (and only if) the court is of the opinion that his failure is due to his wilful refusal or culpable neglect it may if it thinks fit –

Issue a warrant of commitment against the debtor, or

Fix a term of imprisonment and postpone the issue of the warrant until such time and on such conditions (if any) as the court thinks just.¹⁶³

As in criminal sentencing, Magistrates' courts who considered applications for committal had the option to suspend the issuing of a warrant of committal on agreed conditions, most typically an agreement to repay arrears in regular instalments for a defined period. Failure to maintain such an agreement meant that the warrant of committal would be issued and the individual imprisoned. In 2016-17, 159 suspended sentences were ordered, just under half of the number of applications for committal made.¹⁶⁴

A statutory maximum sentence of three months is prescribed by regulation (46(7)),¹⁶⁵ but no specific guidance on aggravating or mitigating factors is given. For example, it is not clear from the regulation whether the length of the sentence is connected to the amount of arrears the individual has accrued or whether it is based on perceptions of the blameworthiness of their conduct in terms of wilful refusal or culpable neglect. This is discussed further in Chapter Five.

A further omission from the regulations is any mention of an option to appeal based on the legality of the decision to commit, also discussed further in Chapter Five. The only way in which the regulations state an individual can be released from prison

¹⁶³ CT(AE)R 1992, reg 47(3).

¹⁶⁴ Collard, Hodges and Worthington (n 89) 11. For context, in 2020 magistrates' courts in England and Wales received 1.13 million cases, 74% of which were for summary offences or breaches which could be resolved in a magistrates' court without the need for a trial. In March 2021, magistrates courts in England and Wales had a backlog of 395,000 cases. Georgina Sturge, 'Court Statistics for England and Wales' (House of Commons Library 2021) CBP 8372 <<https://researchbriefings.files.parliament.uk/documents/CBP-8372/CBP-8372.pdf>> 7.

¹⁶⁵ CT(AE)R 1992.

before the prescribed end of their sentence is if the full arrears, including the costs of the authority, are paid.¹⁶⁶ If any part payment falling short of the full arrears is made during their term of imprisonment their total term will be reduced in proportion to the amount they have paid.¹⁶⁷

Other than the options to issue a warrant of committal or suspend a sentence on repayment conditions, the only other option available to the magistrates is to remit the debt under Regulation 48(2).¹⁶⁸ This will mean there is no longer an enforceable debt for the local authority to pursue. This is likely to be an outcome local authorities would wish to avoid, as they have the option to write off the debt prior to applying for committal and incurring its associated costs and efforts. Nonetheless, if the court did not feel a sentence or suspended sentence is appropriate, they had the option to remit the debt (considered further in Chapter Five).¹⁶⁹

Following consideration of all the options set out in these regulations, some debtors will be committed to prison with immediate effect. Twenty such sentences were imposed in 2016-17.¹⁷⁰ As with the other enforcement methods considered above, and unlike collection rates, annual data on the number of committals is not made publicly available. Although the number of individuals imprisoned is low, the magnitude of the impact this committal will have on the individual's life is not to be minimised. A period of imprisonment is likely to have an impact on housing, employment, social security benefits and, where the individual has dependent children, could prompt involvement from social services. As highlighted by Wacquant:

'entry in detention is typically accompanied by the loss in terms of one's job and housing, but also by the partial or total suppression of public aid and other social benefits. This sudden material impoverishment cannot but affect the

¹⁶⁶ CT(AE)R 1992, reg 47(7).

¹⁶⁷ CT(AE)R 1992, reg 47(7)(b).

¹⁶⁸ CT(AE)R 1992.

¹⁶⁹ CT(AE)R 1992, reg 48(2).

¹⁷⁰ Collard, Hodges and Worthington (n 89) 11

inmate's family and, in return, fray his ties and weaken his affective relations with those close to him (separation from his partner or wife, "placement" of children with child protective agencies, distancing from friends, etc.)¹⁷¹

Crucially, if an individual is imprisoned, their arrears become unenforceable, meaning the local authority will be unable to recover the debt or their costs incurred to date. This will be considered further in relation to the purpose of committal in Chapter Five.

GOOD PRACTICE PROTOCOL

In January 2019, the Council Tax Protocol for Wales on Good Practice in Collection of Council Tax was launched with endorsement from the Welsh Government, the twenty-two Welsh local authorities and the Welsh Local Government Association. The stated aim of this protocol was to:

Ensure that there is a consistency in providing support to those who have difficulty in managing their affairs whilst ensuring enforcement is effective against households who have the means to pay but make deliberate choices not to do so.¹⁷²

This protocol contains a number of commitments in relation to the practicalities of billing, collection and enforcement of council tax in Wales. The commitments relate to effective partnership working, clarity of information provided to taxpayers and the nature of decisions taken to recover council tax arrears. Perhaps the most relevant commitment is that 'local authorities should robustly review each liability order on an individual basis to determine the most appropriate method of recovering the debt, making appropriate use of all information and intelligence to which they have legitimate access.'¹⁷³

¹⁷¹ Loic Wacquant, *Prisons of Poverty* (University of Minnesota Press 2009) 125.

¹⁷² 'Council Tax Protocol for Wales: Good Practice in Collection of Council Tax' <<https://gov.wales/sites/default/files/publications/2022-06/council-tax-protocol.pdf>>.

¹⁷³ Ibid.

The Good Practice Protocol does not form part of the statutory regulations on council tax enforcement but is advisory for all parties involved in council tax arrears, including enforcement agents and debt advice charities.

In this chapter we have explored the fundamentals of council tax design, administration, and enforcement to contextualise what council tax arrears mean for the individual in debt and the local authority tasked with enforcing that debt. In doing so we have identified several examples of legal and economic divergence between Wales and England in terms of valuation, council tax support, discounts, reductions, and most significantly, the removal of imprisonment as an enforcement method from 2019. We have also seen the brevity of the legal regulations which underpin this form of debt enforcement and considered the non-statutory guidance which has emerged to further prescribe the expected conduct of all involved.

At all stages of the enforcement process we have been able to gauge the frequency with which each enforcement method was used in Wales by reference to figures from 2016/17. It is important to reiterate that these figures constitute the only publicly accessible data on the volume of use of each enforcement method, and only came to light as a result of research by Greenall and Prosser (2017) (discussed further in Chapter Two). They were produced as benchmarking data by each local authority which are only shared between local authorities and not typically published. It is therefore very difficult to know with any certainty how often committal was used as an enforcement method in Wales, and this absence of data should be kept in mind throughout the remainder of this thesis, given the emphasis on quantitative measurement that it will bring to light.

Collection rates across Wales are the major indicator of local authority performance, and are therefore much more accessible, published on an annual basis. In this chapter we have seen that the average collection rate across Wales dipped in the two years following the removal of committal, but it is important to note the minimal

scale of this reduction considering the additional economic impact of the pandemic, and the most recent improvement in collection rates.

In the remainder of the thesis the removal of committal as an enforcement method will be explored with a view to understanding why and how it was used, what led to its removal and what this tells us about the future of council tax enforcement. In the next chapter we will consider existing research and scholarship in this area.

CHAPTER TWO – LITERATURE REVIEW

In this chapter I will review existing literature in the field of council tax enforcement. As with any literature review, the purpose is to survey the literature and identify evidential gaps which the remainder of the thesis aims to fill. In this legal area, however, there is a significant lack of academic research on both the general topic and the specific focus of this thesis i.e., the enforcement of council tax and the use of imprisonment as one element of that wider enforcement system. Debt enforcement is by no means a crowded research area, which is surprising given its interconnectedness to wider issues of poverty and social welfare. It is therefore hoped that this chapter achieves its primary goal of justifying the research which informed this thesis, but also acts as a more general call for academic research on debt enforcement. Debt, in all its numerous forms, is now pervasive in society; for this reason, we must give the mechanisms for its enforcement and resolution thorough and careful consideration.

The review will be separated into three sources of literature: third sector, academic and governmental. The scope of the review is broad in terms of sources of literature and time period, in order to provide a comprehensive overview of the somewhat disparate research which has been conducted on council tax enforcement. It excludes research which focuses on the economic criticisms which can be made of council tax as a form of local taxation,¹⁷⁴ because of the focus on legal enforcement, but this literature will be referred to where relevant throughout the thesis. The geographical scope includes both England and Wales, as any divergence in enforcement options is a recent phenomenon, and because research with a particular focus on Wales is less common. In identifying some of the limitations in

¹⁷⁴ This includes a significant body of work by Orton et al: Michael Orton, 'Council Tax: Who Benefits?' (2002) 10 *Benefits* 111; Michael Orton, 'Irresponsible Citizens? New Labour, Citizenship and the Case of Non-Payment of Local Taxation' (2004) 24 *Critical Social Policy* 504; Michael Orton, 'Inequality and the Reform of a Progressive Local Tax: The Debate in the UK' (2005) 4 *Social Policy & Society* 251; Michael Orton, 'Struggling to Pay Council Tax: A New Perspective on the Debate about Local Taxation' (Joseph Rowntree Foundation 2006); Michael Orton, 'How to Help People Pay Local Tax: Abolish Council Tax Benefit?' (2006) 14 *Benefits* 19; Davies, Orton and Bosworth (n 42); Michael Orton, 'Understanding the Exercise of Agency within Structural Inequality: The Case of Personal Debt' (2009) 8 *Social Policy & Society* 487.

existing research I will make an argument in favour of qualitative research which seeks to understand the assumptions which informed the use of imprisonment as an enforcement method, and the processes and decisions which have produced different legal outcomes for the indebted.

I will start by reviewing examples of the body of research on council tax enforcement that is most substantial; research published by third sector organisations who provide free advice to individuals in debt. Twenty-two reports were reviewed which span the period 2014-2021. The review does not claim to be representative of *all* research produced by debt advice organisations but aims to draw out patterns and commonalities in their presentation and content. It must also be said that the quality and rigour of reports of this kind varies, but this does not negate valid critique.

ADVOCACY RESEARCH

Organisations such as Citizens Advice¹⁷⁵, StepChange Debt Charity¹⁷⁶ and the Money Advice Trust¹⁷⁷ play an ever more crucial societal role in their efforts to guide people in financial difficulties towards resolution. They are often staffed wholly or partly by volunteers, and their services are free at the point of use. The Money Advice Service, a statutory body tasked with coordinating the national financial capability strategy, estimates that debt advice provision provides a social gain of £301-568 million per year, including improvements to mental health and relationships, and a reduced risk of homelessness.¹⁷⁸

¹⁷⁵ <https://www.citizensadvice.org.uk/wales/> (formerly the Citizens Advice Bureau) [accessed 1 November 2020].

¹⁷⁶ <https://www.stepchange.org> [accessed 1 November 2020].

¹⁷⁷ <https://www.moneyadvicetrust.org> [accessed 1 November 2020].

¹⁷⁸ European Economics, 'The Economic Impact of Debt Advice: A Report for the Money Advice Service' (The Money Advice Service 2018) <www.moneyadviceservice.org.uk/en/corporate/economicimpactdebtadvice> accessed 15 April 2021.

There is a growing literature¹⁷⁹ which reflects on the qualities of ‘advocacy research’, defined by Gilbert as ‘empirical investigations of social problems by people who are deeply concerned about those problems.’¹⁸⁰ This deep concern may seem difficult to criticise, but in highly polarised areas such as debt enforcement, this form of research fails to provide unbiased evidence, which can create tensions with creditor organisations who do not feel advocacy research reflects the full story of debt enforcement. This being said, there is no doubt that advocacy research has played an important role throughout history in drawing the attention of both the public and the government to emerging threats to social welfare, as far back as the survey of poverty conducted by Charles Booth in Victorian London.¹⁸¹ It is fair to say that advocacy research has had a role in guiding the course of government funding, philanthropy and public concern, highlighting the need to protect the most vulnerable in society. Any criticisms of such publications are made with these accomplishments in mind, and with the intention of understanding the influence of the modern context in which they operate.

The wider remit of debt advice charities in recent years has included policy campaigns, focusing on systemic problems, and recommending reforms which could reduce the number of people who require their advice services. They produce regular reports presenting their own data and have their place in providing a high-level overview of debt trends. However, I will argue in the following sections that there is a need to move away from treating reports of this kind as research evidence, and to see them as campaign documents produced as tools to advocate for their

¹⁷⁹ Howard S Becker, ‘Whose Side Are We On’ (1967) 14 *Social Problems* 239; Joel Best, ‘Rhetoric in Claims-Making: Constructing the Missing Children Problem’ (1987) 34 *Social Problems* 101; Victor L Streib, ‘Academic Research and Advocacy Research’ (1988) 36 *Cleveland State Law Review* 253; Neil Gilbert, ‘Advocacy Research and Social Policy’ (1997) 22 *Crime & Justice: a review of research* 101; Alex Stevens, ‘Telling Policy Stories: An Ethnographic Study of the Use of Evidence in Policy-Making in the UK’ (2010) 40 *Journal of Social Policy* 237; Ian Sanderson, ‘Evidence-Based Policy or Policy-Based Evidence? Reflections on Scottish Experience’ (2011) 7 *Evidence & Policy* 59; Kenneth McLaughlin, ‘Advocacy Research and Social Policy: Action for Children and the National Society for the Prevention of Cruelty to Children as Case Studies’ (2015) 35 *International Journal of Sociology and Social Policy* 239; Gary Clapton and Vivienne E Cree, ‘Communicating Concern or Making Claims? The 2012 Press Releases of UK Child Welfare and Protection Agencies’ (2017) 17 *Journal of Social Work* 71; Mark McCormack, ‘Advocacy Research on Homophobia in Education: Claims-Making, Trauma Construction and the Politics of Evidence’ (2020) 54 *Sociology* 89.

¹⁸⁰ Gilbert (n 179) 101; McCormack (n 179) 91.

¹⁸¹ McCormack (n 179) 91.

specific client base. This is because of the skewing effect which can occur when a social issue such as council tax arrears is dominated by advocacy research which operates in pursuance of only the debtor's agenda. The methodological issues and rhetorical devices which I will discuss in the following sections highlight a need for more rigorous research with a greater balance of quantitative measuring and qualitative understandings of the complexities of debts to local government. This would counteract the current bias in favour of quantitative measuring, a trend which explains the relative absence of discussion of imprisonment as an enforcement method in most of these reports, despite its severity as a sanction and potential impact on the lives of debtors. The nature of advocacy research perpetuates a utilitarian agenda focused only on issues which affect the greatest number of people.

I will now consider features which are common across publications produced by debt advice organisations.¹⁸² These include common styles of presentation, a tendency for broad definitions, bias in data sampling, over-emphasis on quantitative measurements and over-simplified data visualisations. When taken in the round, all these features relate to the emphasis in recent years in third sector research on the use of enforcement agents, to the detriment of other aspects of the enforcement process, in particular, imprisonment. A compromise of methodological rigour is made to pursue a consistent policy message in favour of preventing the use of enforcement agents, drawing attention away from even more severe forms of enforcement.

PRESENTATION

Firstly, the way in which charities describe their publications is important; they are categorised as research¹⁸³ and structured similarly to academic publications. Their websites are divided into information for those seeking advice and their wider policy work, including research reports. All the literature reviewed was labelled by the

¹⁸² As noted above, this review did not include every publication produced by such organisations; a full list of the reports considered is included in the bibliography.

¹⁸³ McCormack (n 179) 93.

organisation as research.

It is common for the reports to open with an introductory statement from someone in a position of authority,¹⁸⁴ such as the charity's Chief Executive Officer or a Member of Parliament. This lends legitimacy to the report's findings¹⁸⁵ and suggests a level of consensus or broader support for the issues to be discussed. Specific authors are often not named, or their name is only provided on the final page of the report. This practice of 'non-attribution' suggests that the charity itself is responsible and the report is therefore more authoritative.¹⁸⁶ This is an important aspect of advocacy research: the organisation can assert authority on the topic because of their proximity to the social issue, particularly in the case of debt advice organisations whose primary role is to provide a service to people in debt. This experiential closeness is undeniable but does not necessarily produce the most accurate or useful evidence because of the danger of the introduction of bias in their approach.

DEFINITIONS

An effective method to draw attention to a social issue is to use very broad definitions¹⁸⁷, because a widespread problem demands attention.¹⁸⁸ Wide definitions are used to make claims about the incidence of debt, even though this is influenced by a large range of different socio-economic variables and is often a proxy for the condition of the economy or rates of unemployment. Such broad definitions are symptomatic of the preference for quantitative measuring as opposed to qualitative understanding. For example:

¹⁸⁴ Clapton and Cree (n 179) 78.

¹⁸⁵ Clapton and Cree (n 179); McCormack (n 179) 95.

¹⁸⁶ McCormack (n 179) 95; Clapton and Cree (n 179) 78.

¹⁸⁷ Gilbert (n 179) 123.

¹⁸⁸ Best (n 179) 106.

In 2018, approximately 1 in every 75 Welsh adults contacted StepChange Debt Charity for help with their debt problems.¹⁸⁹

Based on general public polling, we estimate that around 8% of adults living in Wales are facing severe debt problems...this equates to 193,000 people in Wales in severe problem debt. We estimate a further 412,000 (16% of the Welsh population) are showing signs of financial distress.¹⁹⁰

The definitions encompass a range of different debts and are unspecific; it is difficult to pinpoint what it would mean to be in 'severe debt problems' and how this might differ from 'showing signs of financial distress'. Definition of key terms is a key aspect of methodological rigour, setting parameters to both the research phenomenon and the scope of any conclusions. These statements are persuasive and eye-catching, and for this reason are more likely to be picked up by the media and repeated,¹⁹¹ drawing focus to the work of debt advice organisations and justifying their continued funding. Although it is undeniably important to highlight how common debt problems now are, the incidence of debt does not necessarily relate to, and may not be improved by, changes to the way in which it is collected.

Council tax arrears are a unique form of debt but are frequently subsumed into a wider topic of 'debts to government', or even more broadly to 'household bill debt problems'¹⁹², which includes utilities. This is often in the context of drawing a valid distinction between debts on what might be considered essentials, and consumer debts such as store cards and personal loans, in an attempt to highlight the

¹⁸⁹ 'Wales in the Red' (StepChange Debt Charity 2019) <www.stepchange.org/Portals/0/assets/pdf/Wales-in-the-Red-2019-English.pdf> accessed 12 April 2021.

¹⁹⁰ *ibid* 3.

¹⁹¹ Best (n 179) 116; Clapton and Cree (n 179) 72.

¹⁹² Joe Lane, Barney McCay and Marini Thorne, 'Hidden Debts: The Growing Problem of Being behind on Bills and in Debt to the Government' (Citizens Advice 2018) <[www.citizensadvice.org.uk/Global/CitizensAdvice/Debt%20and%20Money%20Publications/Hidden%20Debts%20report%20\(1\).pdf](http://www.citizensadvice.org.uk/Global/CitizensAdvice/Debt%20and%20Money%20Publications/Hidden%20Debts%20report%20(1).pdf)> accessed 12 April 2021, 2.

emergence of the former over the latter in recent years.¹⁹³ Such claims are strengthened by the element of novelty, a suggestion that they have identified a new or emerging phenomenon.¹⁹⁴ For example, Citizens Advice state that in 2019/20 they ‘helped people with more than 75,000 more government debt issues...compared to all consumer credit issues.’¹⁹⁵ However, the phrase ‘government debt’ includes thirteen different types of debt¹⁹⁶, such as a range of different benefits overpayments which have little in common with council tax arrears. The scale of problems with council tax arrears is therefore artificially inflated¹⁹⁷ by its inclusion within a broader definition. This grouping of different debts under a wider heading is seemingly deliberate; those who seek advice are likely to identify the kind of debt they are struggling with, such as council tax or rent arrears, rather than use the phrase ‘government debts’, and each advice issue will be labelled separately. It is therefore unlikely to be caused by a lack of specificity in their data, but instead a decision to amalgamate several different debt types under one label to increase the perceived scale of the problem.

DATA SOURCES AND SAMPLING METHODS

In terms of data collection, a major source for debt advice charities is the information they retain from each advice client. For example, a client might explain that they have fallen behind on their council tax because of an increase in their rent, or because

¹⁹³ It is also common for these reports to use this increase in debts on essentials in comparison with reduced levels of debts such as pay-day loans as a criticism of local authorities, although the reduced availability of high-cost credit may actually be a cause of increased debts on essentials. Although the increased regulation of private lending is undoubtedly positive, for those households whose income does not cover their outgoings credit is a necessity, rather than a choice.

¹⁹⁴ Best (n 179) 104.

¹⁹⁵ ‘Fairness in Government Debt Management: Citizens Advice Response to the Cabinet Office’ (Citizens Advice 2020)

<www.citizensadvice.org.uk/Global/CitizensAdvice/Debt%20and%20Money%20Publications/Fairness%20in%20government%20debt%20management%20-%20call%20for%20evidence%20-%20Copy.pdf> accessed 12 April 2021, 3.

¹⁹⁶ Council tax, rent arrears, unpaid parking penalties, magistrates fines and compensation orders, overpayments of Working Tax Credit and Child Tax Credit, overpayment of housing and council tax benefit, overpayment of other benefits, social fund debt, arrears of Income Tax, Value Added Tax or National Insurance, overpayments of Income Support, Job Seekers Alliance and Employment Support Allowance, maintenance and child maintenance arrears, Universal Credit advance payment/budgeting and overpayment of Universal Credit.

¹⁹⁷ McCormack (n 179) 93-94.

they have been made redundant. The advisor would label their case in terms of the separate issues raised, such as council tax debt, rent arrears or employment.¹⁹⁸ These issues are monitored, rather than just the number of individual people who seek advice, to keep track of both national and localised problems.¹⁹⁹ This ‘service data’ is common across advocacy research.²⁰⁰

Service data is available in large volumes and, because it is longitudinal, enables tracking of changes over time. However, it has a major and consistently unacknowledged limitation in that it only represents the experiences of those who seek debt advice. It is difficult to quantify what proportion of people in debt seek advice, but there will always be a proportion of the indebted population who do not, whether that is because they feel able to address the problem themselves, because they are intentionally avoiding paying, or some other reason. Despite this, claims are phrased in a way which suggests that they are representative of *all* people in debt, without defining how the figures have been calculated. For example:

We estimate that over 3.5 million people are currently behind on council tax.²⁰¹

45% of adults in Wales say they, or someone in their household, experienced a life event in the past two years. This is the same figure as for all GB adults.²⁰²

¹⁹⁸ Ed McDonagh, Rosie Derricourt and Thelma Baker, ‘The Rules of Enforcement: Making a Complaint about the Behaviour of Bailiffs in a Self-Regulated System’ (Citizens Advice 2019) <[www.citizensadvice.org.uk/Global/CitizensAdvice/Debt%20and%20Money%20Publications/The%20rules%20of%20enforcement%20\(5\).pdf](http://www.citizensadvice.org.uk/Global/CitizensAdvice/Debt%20and%20Money%20Publications/The%20rules%20of%20enforcement%20(5).pdf)> accessed 12 April 2021, 35.

¹⁹⁹ Citizens Advice explain this service data collection as follows: ‘For every person we help, we record an ‘advice issue’. These run at 3 levels of detail. The first level is fairly general, e.g., ‘debt’ or ‘benefits’. The second level of detail tends to give a type of problem, e.g., ‘council tax arrears’ or ‘parking fine’ and the third level of detail states what the specific issue is, e.g., ‘bailiffs’...More than one issue can be recorded per person who visits us.’

²⁰⁰ Clapton and Cree (n 179) 82.

²⁰¹ Benedict Guindi and Tilly Cook, ‘Unavoidable Debt: Coronavirus Council Tax Debt’ (Citizens Advice 2021) <www.citizensadvice.org.uk/Global/CitizensAdvice/Debt%20and%20Money%20Publications/Unavoidable%20debt.pdf> accessed 12 April 2021, 2.

²⁰² ‘Wales in the Red’ (n 189) 5.

In addition, an important limitation of service data is that some debt advice charities²⁰³ also refer certain demographics, such as the self-employed, to more specialist services, meaning that some of the types of debtor which are often hardest for local authorities to reach also do not feature in research which appears on the surface to be representative.

A related limitation is that debt advice service data is likely to over-represent those with more serious debt issues. It is fair to assume that some people will be able to resolve their debt problems at an early stage without having to seek advice, meaning that a disproportionate number of debt advice clients will be dealing with later stage enforcement measures, such as bailiffs. In the majority of the reports this was not acknowledged, for example:

Disappointingly, half (48%) had actually been visited by bailiffs – much higher than the proportion of clients who had been offered an affordable repayment plan to clear their arrears (30%).²⁰⁴

This means that the sample of people from which debt advice charities draw conclusions is skewed towards those who have significant debts and are at the later stages of the debt enforcement process, giving a biased perspective on how many people are subject to certain enforcement methods. This is highlighted in one report by Citizens Advice, but this is the exception rather than the norm in terms of reflecting on data limitations:

When asked to identify the three most commonly used methods of council tax recovery, from their experience almost two thirds of advisers (65%) indicated that recovery action by enforcement agents is the most commonly used...this

²⁰³ For example, StepChange, who state: 'Any client who contacts StepChange Debt Charity for business debts or is self-employed is referred to Business Debtline, a charity run by the Money Advice Trust.' Wales in the Red (n 189).

²⁰⁴ Michael Kelly, 'Catching up: Improving Council Tax Arrears Collection' (Citizens Advice 2016) <www.citizensadvice.org.uk/Global/CitizensAdvice/Debt%20and%20Money%20Publications/Catching%20up%20improving%20council%20tax%20arrears.pdf> accessed 12 April 2021, 11.

finding should be viewed in the context that people are more likely to turn to Citizens Advice once court/enforcement is being pursued.²⁰⁵

Therefore, those individuals who fall behind with council tax but arrange a repayment plan with their local authority will not feature in their data sets. This skewing towards more extreme debt situations may also influence the perceptions of the respondents, meaning that they are unlikely to feel positively about the situation or be complimentary of those involved, because their overall circumstances are very difficult. For example:

50% of clients who were contacted by bailiffs said they were treated unfairly.²⁰⁶

Considering how negative the experience of being visited by an enforcement agent to take control of your possessions is, it is in some ways surprising that the other 50% of those who were polled did not report feeling unfairly treated (although we are not given details of all the possible responses or the exact survey question). This also conceals earlier attempts to recover the arrears which precede instruction of a bailiff, and highlights the limitations of relying on the reflections of debtors, who are likely to, understandably, focus on the worst aspects of their experience in an effort to encourage future leniency.

Outside of service data, these organisations often conduct their own primary research, most commonly using online surveys²⁰⁷ on platforms such as YouGov. The organisation's own debt advisers, or staff of other debt advice charities, are common participants, without any reflection on the bias which such participants will inevitably

²⁰⁵ Lindsey Kearton, 'Fairness for All: Improving Council Tax Debt Collection in Wales' (Citizens Advice 2016) <www.citizensadvice.org.uk/Global/CitizensAdvice/Wales/Fairness%20for%20all%20-%20September%202016%20-%20Google%20Docs.pdf> accessed 12 April 2021, 27.

²⁰⁶ 'Creditor and Debt Collector Conduct: What's Making Debt Problems Worse?' (StepChange Debt Charity 2016) <www.stepchange.org/Portals/0/documents/Reports/stepchange-creditor-and-debt-collector-conduct-july2016.pdf> accessed 12 April 2021, 2.

²⁰⁷ McCormack (n 179) 97-98.

bring which damages the reliability of their findings. For example:

Only 11% of advisers we surveyed have had a positive experience of making a complaint.²⁰⁸

Reports frequently contain self-citations or references to the work of similar organisations,²⁰⁹ many of which form coalitions on policy goals such as Taking Control.²¹⁰ This gives the impression of consensus, and a cumulative block of evidence²¹¹ which consistently supports certain policy recommendations but does not give any space for other perspectives.

QUANTITATIVE PREFERENCE

All of the papers reviewed took a primarily quantitative approach to data collection, analysis and presentation. Quantitative research aims to apply measurements to data and make general statements which are statistically representative of the total population of concern. It is submitted that research methods which focus on quantifying debt issues do not always increase our understanding of the underlying causes of debt or help us to make conclusions about the propriety of debt enforcement measures. As discussed in Chapter One, local authorities do not publish monitoring data on their use of different enforcement methods, meaning there is a lack of publicly available data on some fundamental aspects of council tax enforcement and an understandable desire of debt advice charities to fill this evidential void and quantify the problems they have identified. There is undeniably a place for quantitative research in this area, but the approach to data collection and analysis must be rigorous for findings to be reliable. There is not only an over-emphasis on quantitative research in advocacy research, but often the statistical

²⁰⁸ McDonagh, Derricourt and Baker (n 198) 2.

²⁰⁹ McCormack (n 179) 96.

²¹⁰ Taking Control is a campaign for bailiff reform which includes AdviceUK, Christians Against Poverty, Citizens Advice, Community Money Advice, Institute of Money Advisers, Money Advice Trust, Money and Mental Health Policy Institute, PayPlan, StepChange Debt Charity, The Children's Society, Toynbee Hall and Z2K. <www.bailiffreform.org/#about> accessed 12 April 2021.

²¹¹ Gilbert (n 179) 123.

methods are flawed, meaning that the findings are of very little use. For example, one report by StepChange which focused on Wales concluded that:

Unsurprisingly, given its population size, the local authority with the highest number of new StepChange clients from July 2018-June 2019 was Cardiff.²¹²

This demonstrates a failure to apply basic weighting to the data to account for variation in population between local authority areas, to avoid coming to something of an obvious conclusion that population size correlates with the level of advice need. This overly simplistic analysis conceals all nuance in their data, such as the fact that the relatively deprived local authority areas of Merthyr Tydfil and Blaenau Gwent had the same number of debt advice clients as more affluent Monmouthshire. Even though this finding contributes very little in terms of improving debt resolution in Wales, it is still included because its quantitative nature is associated with certainty.

The way in which quantitative data is interpreted also highlights the influence of bias. The use of enforcement agents is one of the biggest concerns of the debt advice sector and they use the rates of complaints made against enforcement agents to support their own perception that enforcement agents act without consequences and are a 'law unto themselves'.²¹³ Their interpretation of the data fits their advocacy narrative that the use of enforcement agents is not appropriate.

According to the Ministry of Justice, there have only been 56 complaints through the new court-based process since it was introduced in 2014.²¹⁴

²¹² 'Wales in the Red' (n 189) 4.

²¹³ Marini Thorne and Joe Lane, 'A Law unto Themselves: How Bailiffs Are Breaking the Rules' (Citizens Advice 2018)

<[www.citizensadvice.org.uk/Global/CitizensAdvice/Debt%20and%20Money%20Publications/A%20law%20unto%20themselves%20final%20%20\(1\).pdf](http://www.citizensadvice.org.uk/Global/CitizensAdvice/Debt%20and%20Money%20Publications/A%20law%20unto%20themselves%20final%20%20(1).pdf)> accessed 12 April 2021.

²¹⁴ McDonagh, Derricourt and Baker (n 198) 2.

This is evidence that it is too difficult to seek redress against bailiffs...This very small number of complaints shows that bailiffs are operating in a highly unaccountable environment.²¹⁵

Here, the analysis assumes cause and effect where the data in isolation cannot support such conclusions. This can be seen in other examples of advocacy research, where a recorded increase in the frequency of a phenomenon is viewed out of context, when it may be a result of greater sensitivity to the issue or a change in recording mechanisms.²¹⁶ The level of complaints could also indicate a low level of concern about enforcement agent practices. Their perspective on complaints appears even more problematic considering their finding that 'our polling of advisers showed that 25% don't advise clients to make a complaint as they have no faith in the process.'²¹⁷ Here, they identify a potential cause of low complaint numbers which relates to the practice of their own advisers but still conclude that the problem is unaccountability of enforcement agents. To fully explore the statistics on complaints and make valid conclusions would require a regression model which incorporated all the independent variables which cause variation in the dependent variable, the number of complaints. In addition, a reliable model would require data on complaints submitted through all possible avenues, including those made to enforcement agents which may be resolved through their own complaints processes. Their findings are flawed, but consistent with their policy goal to further regulate enforcement agents or stop using them altogether.

In uncomfortable contrast to this quantitative style, reports often also contain individual case studies of previous clients. These case studies do not include direct quotes but have been written by debt advisers, further reducing their reliability as evidence. They often contain incomplete information about the history of the debt, making it difficult to reach objective conclusions about the propriety of the debt enforcement methods or compliance with the regulations. For example:

²¹⁵ *ibid* 17.

²¹⁶ Clapton and Cree (n 179) 82.

²¹⁷ McDonagh, Derricourt and Baker (n 198) 24.

Sarah has depression and lives with her son in the East Midlands. She has struggled to manage changes to her benefits over the course of a few years, and fell behind on council tax two years in a row. These debts amount to around £1,000. After taking into account her expenses, Sarah has only £40 of disposable income per month. She pays £20 of this income to meet the cost of the first year's council tax debt. Recently, Sarah made an offer to repay the other debt with her remaining £20 of available income. The bailiff firm rejected this affordable payment offer and is asking that Sarah pay more than £100 of her income per month.²¹⁸

It is unclear from the limited facts why enforcement agents have been instructed, as Sarah already has a repayment arrangement in place with her local authority. There is also no information about whether the enforcement agent referred her offer to her local authority for consideration. Case studies of this kind are understandably anonymised or given pseudonyms, but this prevents any local authority or enforcement agent from investigating what happened in the case and making improvements, if necessary, which compromises their utility as a form of evidence. These case studies act as 'exemplars of the worst case'²¹⁹, incongruous with the rest of the reports which seek to quantify and make representative claims of everyone in debt. They also over-emphasise narrative or 'story-telling'²²⁰, without acknowledging that there are two parties to debt and therefore two perspectives on its enforcement. Case studies are, nonetheless, effective in drawing attention and, despite being individualised, often become the referent for discussions about the general problem.²²¹

Although mixed qualitative and quantitative methods is a valid research approach, they demand equal methodological rigour in both approaches and a clear connection between two data sources of different kinds; this is not achieved in these reports.

²¹⁸ Thorne and Lane (n 213) 12.

²¹⁹ McCormack (n 179) 98.

²²⁰ Stevens (n 179) 241.

²²¹ Best (n 179) 106.

Different sources are combined for maximum emotive effect,²²² but provide neither reliable quantitative nor rich qualitative evidence from which reform options can be developed. These issues are exacerbated by the tendency to provide incomplete or inadequate details of their research methodology or approach to data analysis.²²³ As a result, the accuracy or validity of the findings cannot be independently assessed because the research is not replicable.²²⁴ Perhaps the most important element of research methodology is an assessment of the ethical implications of the research, but this did not feature in any of the reports reviewed. Given the privileged access to participants which service data presupposes and the blurring of lines between adviser and researcher, this is highly problematic, and further highlights the disparity between advocacy and academic research.

DATA VISUALISATION

The way in which findings are presented can exacerbate bias or skewing of data, channelling the attention of policy makers towards particular issues at the expense of others. For example, in 2016 Citizens Advice Cymru surveyed debt advisers across Wales, including a question on the most common enforcement methods used by local authorities in their area.²²⁵ Although debt advisers are exposed to lots of information about people in debt, a research question focusing on frequency of use of different enforcement methods may have been better answered by data from local authorities themselves. As noted by Becker in the context of mental health services, ‘unless we also make the administrators and physicians the object of our study...we will not inquire into why those conditions and constraints are present. We will not give responsible officials a chance to explain themselves and give their reasons for acting as they do.’²²⁶

²²² McCormack (n 179) 98.

²²³ *ibid* 97.

²²⁴ *ibid* 97.

²²⁵ Kearton (n 205) 27, 52.

²²⁶ Becker (n 179) 242.

The survey question used, shown below, does not include all of the enforcement methods available to local authorities, most crucially excluding the most severe sanction of imprisonment. Anyone who wished to give imprisonment as an answer would be forced to use the 'other' option, which could not be analysed because of its generic, 'catch-all' nature. The questions are therefore leading, in that they exclude as an option those enforcement methods which they already perceive to be uncommon, thereby removing them from the policy agenda. Although I would argue that 'most common' is in any event not the most useful empirical indicator for debt enforcement research, this survey also omits what is likely to be the most common enforcement method, the use of reminder letters and final notices, which other research with local authorities suggests were issued to more than one third of households in Wales in 2016.²²⁷ There is also a failure to acknowledge the limitations of asking survey respondents to recall the frequency of something based on their own experience; there is no guarantee of accuracy in their recall, and no requirement for them to verify their answers by reference to evidence.

Q6. In your experience, which of the following methods of council tax debt collection does your local authority most commonly use when trying to recover a client's debt?

[Please rank from 1 to 3, with 1 being the most commonly used]

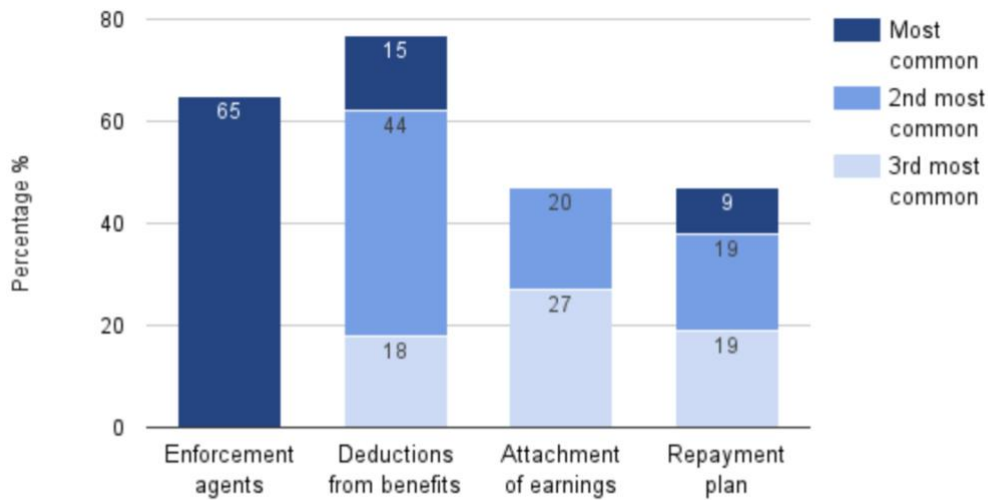
Setting up of special payment arrangements
Applying for a Liability Order to pursue an attachment of earnings order
Applying for a Liability Order to pursue deductions from benefits
Applying for a Liability Order to pursue action by enforcement agents
Applying for a Liability Order to pursue a Charging Order
Applying for a Liability Order to pursue bankruptcy proceedings
Other (please specify)

Responses to this survey were presented in the following bar graph, which can be seen as an example of what Stevens calls 'killer charts',²²⁸ data visualisations which make policy implications immediately clear, to the sacrifice of presenting full results.²²⁹

²²⁷ Greenall and others (n 104) 105.

²²⁸ Stevens (n 179) 237, 243.

²²⁹ *ibid* 243.



▲ Graph 5: Ranking of most commonly used debt collection methods

It is conventional in quantitative research to provide an information key for graphs and diagrams, such as the number of participants and the sum total of percentages. Neither of these measures are provided for the above graph, which makes it difficult to interpret. As all participants were asked to rank their first, second and third most common enforcement method, one would expect each of the groups to sum to 100%. However, none of the groups do in this graph. This is most likely because the graph does not present all of the survey response options; charging orders, bankruptcy and 'other' are excluded. It could also suggest that some participants did not provide full answers, which would be a significant limitation of the survey findings. The graph reminds us that data visualisations are a product of construction, and, by failing to report the full results, the process of construction is made invisible.²³⁰

Given that 24% of respondents ranked something other than enforcement agents as the most common method, it seems unlikely that no-one felt that enforcement agents were the second or third most common. This means that the reader's eye is

²³⁰ *ibid.*

immediately drawn to the dark block colour of the enforcement agent bar, reinforcing the desired narrative of the research that enforcement agents are very commonly used, a visual claim which would have been diluted if some respondents had ranked enforcement agents second or third.

This research demonstrates many of the criticisms discussed above: incomplete reporting of methods, bias in research design and presentation of results. The purpose of this research and the way it is presented in the report serve a particular policy narrative which seeks to prohibit the use of enforcement agents in council tax enforcement or increase regulation and oversight of their work. These aims inform the recommendations which debt advice organisations use to conclude their reports, for example:

The Ministry of Justice should introduce an independent complaints mechanism through its consultation on bailiff regulation.

The Ministry of Justice should introduce an independent bailiff regulator to accompany this complaints process.²³¹

The findings from advocacy research are also adopted by other organisations, including think-tanks like the Centre for Social Justice, and perpetuated without any critique of their methodologies or reflection on their limitations, for example:

Debt advisers surveyed by StepChange were more likely to say bailiff behaviour had *worsened* since the reforms [Taking Control of Goods 2014] were introduced.²³²

This report by the Centre for Social Justice also recommended the establishment of an independent regulator for enforcement agents but did not involve relevant

²³¹ McDonagh, Derricourt and Baker (n 198) 34.

²³² Shalam (n 233) 58.

organisations such as the Civil Enforcement Association in its research, despite enforcement agents being a major focus of their critique of the current system.

NEGLECT OF IMPRISONMENT

As discussed above, most of the advocacy research published in recent years has focused on the use of enforcement agents. Reports tend to refer to imprisonment only in underlining the serious consequences of council tax arrears, but do not provide any evidence relating to its use, often specifically excluding it from surveys and other research tools. This is exemplified by the response submitted by Citizens Advice Cymru to the Welsh Government Public Consultation on the removal of imprisonment in 2018, discussed in detail in Chapter Six. This response contains five paragraphs and one case study which refer to imprisonment, but ten paragraphs and two case studies which refer to issues with enforcement agents, despite the consultation's specific focus on imprisonment. The submission contains references only to previous research by Citizens Advice or PayPlan. The Centre for Social Justice recommended in their 2020 report that sanction of imprisonment should be repealed in England but advocated for the continued use of magistrates' hearings and the use of community orders for non-payment (an alternative which will be discussed further in Chapters Six, Seven and Eight).²³³

Of all the third sector research reviewed, only one publication has a clear focus on the use of imprisonment for council tax arrears. The 2017 report by PayPlan and the Institute of Money Advisers, aptly named 'I can't believe we still do that', is alone in raising questions about the propriety of this criminal sanction for a civil debt issue. It openly states that the research was prompted in part by the 'widely reported case in which a woman was wrongfully imprisoned for council tax debt'²³⁴ – the Bridgend case of Melanie Woolcock, discussed in detail in Chapter Six. It was produced in

²³³ Shalam (n 233).

²³⁴ Alistair Chisholm, "I Can't Believe We Still Do That": The Case for Ending Imprisonment for Council Tax Debt in England and Wales' (PayPlan and Institute of Money Advisers 2017) <www.i-m-a.org.uk/other-services/social-policy/ima-payplan-council-tax-imprisonment-campaign/> accessed 12 April 2021, 6.

collaboration with Rona Epstein, who informed the reflections in the report on the lack of procedural safeguards for debtors facing imprisonment (discussed further in Chapter Five).

The authors used Freedom of Information Requests to local authorities in England and Wales, of which 279 of 348 replied. This led to the conclusion that in 2016/17, committal action had been taken against 4,800 people.²³⁵ They also identified an increase in the number of committal proceedings started and suspended committal orders made between 2012 and 2017, but a decline in the numbers of people actually imprisoned.²³⁶ Welsh local authorities, including Vale of Glamorgan, Blaenau Gwent, Bridgend and Merthyr Tydfil were identified within a list of local authorities which had sought imprisonment in 2016/17, ranging from 1 to 14 individuals imprisoned and between 60 and 339 total days served by all imprisoned.²³⁷ On this basis, they concluded that:

Although there is a greater appetite to use harsh enforcement and the threat of prison by local authorities, there is a diminished appetite to go through with the threat in the courts and/or town halls and deploy the final stage and to lock people up for debt.²³⁸

This exemplifies the limitations in answering how and why questions with purely quantitative data. Both the increased number of applications for committal and the decline in actual committals will be influenced by a range of different factors in each particular case; a deeper understanding of the use of imprisonment requires qualitative research on the realities and assumptions which sit behind these statistics. As stated in the report:

We have not been able to identify any factor in the billing authorities that still imprison people to explain why these councils might choose to take an

²³⁵ *ibid* 5.

²³⁶ *ibid* 12.

²³⁷ *ibid* 14.

²³⁸ *ibid* 13.

unusually harsh approach. For every council that imprisons people, there are similar councils all over the country that do not resort to this action.²³⁹

If applications for imprisonment have increased but the number of individuals actually imprisoned has decreased, this raises questions about the role of the Magistrates' court in interpreting and applying the enforcement regulations, considered in depth in Chapters Five and Six. In addition, engagement with local authorities to understand their views on imprisonment would undoubtedly improve our understanding of these figures, but it does not fit with the partisan nature of advocacy research.

ECONOMIC CONTEXT OF ADVOCACY RESEARCH

All the criticisms made of advocacy research above can be better understood by considering the context in which such organisations now operate. The landscape of funding for charitable organisations is now much more complicated and uncertain than it once was. The fact that advice about debt, which is now a natural consequence of so many aspects of life, should be framed as a charitable exercise at all could be seen as problematic. Charities previously received the majority of their funding from central or local government and through donations. However, cuts to local government funding have prompted councils to reconsider all of the services they invest in, including free advice services.²⁴⁰ Charities are now much more likely to rely on multiple sources of funding of different values and lengths, and each funder may have different expectations in terms of seeing the impact of their money, and its continued need.²⁴¹ One of the main providers of debt advice in England and Wales is Citizens Advice; McDermont and Kirwan describe their current funding budget as 'a mosaic, made up from a diverse range of funding sources: statutory, charitable and

²³⁹ Chisholm (n 234) 14.

²⁴⁰ Morag McDermont and Samuel Kirwan, 'Assembling Advice: Ethnographic Explorations of the Changing Relationship Between Voluntary Advice Services and the Welfare State' (2018) 5 *Qualitative Studies* 110, 117.

²⁴¹ McDermont and Kirwan (n 240) 117; Iwaarden et al (2009) cited in McCormack (n 179) 91.

business.²⁴² They also highlight the transition away from funding ‘grants’ to funding ‘contracts’²⁴³, the former being a general contribution to an organisation whereas the latter signifies an ‘arrangement for the production/delivery of a specified output’.²⁴⁴ Different charities which focus on the same social issues have to compete with each other for funding allocation and prove their worth.²⁴⁵ Some organisations, such as StepChange, receive funding through contributions from creditors through the Fair Share Contribution; if creditors receive a payment from one of their customers through a payment arrangement set up by StepChange, they must pay a percentage-based contribution.²⁴⁶ These changes in the nature of funding and the expectations attached to it have changed the environment in which charities now operate, creating an increased expectation to evidence policy impact and media attention.²⁴⁷ This is likely to be a driver for many of the features of advocacy research discussed above, especially the broad definitions which are effective in expanding the remit of debt advice and justifying their continued funding as not just an advice service but a key player in public policy. Newman and Robins highlight how a change in Welsh Government funding criteria to only fund national advice organisations has contributed to a loss of local law centres, which they describe as a favouring of generalist advice over specialist advice. They note:

Citizens Advice has an important role in access to justice but there needs to also be specialist advice to compliment the generalist support largely provided by volunteers. This is why law centres are crucial to an advice ecosystem.²⁴⁸

²⁴² McDermont and Kirwan (n 240) 118.

²⁴³ Ibid.

²⁴⁴ Stephen P Osborne and Piers Waterston, ‘Defining Contracts between the State and Charitable Organisations in National Accounts: A Perspective from the UK’ (1994) 5 *Voluntas: International Journal of Voluntary and Nonprofit Organizations* 291, 294, cited in McDermont and Kirwan (n 240) 118.

²⁴⁵ Samuel Kirwan, ‘The End of “Tea and Sympathy”? The Changing Role of Voluntary Advice Services in Enabling “Access to Justice”’, *Access to Justice and Legal Aid: comparative perspectives on unmet legal need* (Hart Publishing 2017) 184.

²⁴⁶ ‘How Our Free Debt Advice Is Funded. StepChange’ <<https://www.stepchange.org/about-us/how-we-are-funded.aspx>> accessed 1 October 2022.

²⁴⁷ Clapton and Cree (n 179) 72.

²⁴⁸ Daniel Newman and Jon Robins, ‘“The Demise of Legal Aid”? Access to Justice and Social Welfare Law after Austerity’ (2022) 3 *Amicus Curiae* 448, 459.

It is interesting to note that, since the Covid-19 pandemic, the debt advice reports I have considered have shown more acknowledgment of the difficult role of local authorities. For example:

Local authorities have limited flexibility in the way they recover debts. They are strongly incentivised to recover debt in-year and have limited tools outside the court process.²⁴⁹

Responding to the pandemic has required extra expenditure from local councils. But with 3.5 million people struggling to pay their council tax bills and council tax support costs of £586 million, councils' revenues have declined. As a result, councils have forecasted that they will take £1.5 billion less in council tax in 2019/20. It's in everyone's interests that councils can recover the lost income and continue to provide essential services to their areas.²⁵⁰

This highlights the circularity of council tax, in that every penny collected forms part of the local authority's budget for vital local services, which may include debt advice. This new empathy towards local government is a welcome change in advocacy research but was only brought about by one of the most significant health and economic challenges of our times.

POLICY-BASED-EVIDENCE v EVIDENCE-BASED-POLICY

The wider literature on advocacy research identifies these issues of methodology and forms of claims-making in research reports from a range of different charities, suggesting the presence of a homogeneous style of advocacy research. McCormack suggests that this consistency of style is a symptom of wider trends in what forms of

²⁴⁹ 'Fairness in Government Debt Management: Citizens Advice Response to the Cabinet Office' (n 195) 14.

²⁵⁰ Guindi and Cook (n 201) 6.

evidence are valued by policymakers, valuing certainty above all other qualities,²⁵¹ often to the detriment of methodological rigour.²⁵² Where only evidence which is consistent with the organisation's policy narrative is presented, or methodological quality is compromised, the publications risk falling under the label of policy-based-evidence,²⁵³ as opposed to the highly regarded evidence-based-policy. A system of policy-based-evidence occurs where only evidence which supports a certain policy is sought out, subverting the expectation that policies are developed out of evidence. This can be seen in the dominant focus on regulation of enforcement agents, which excludes all evidence of good practice or improvements in their conduct, as well as excluding other problematic forms of enforcement, such as imprisonment. Because advocacy research is the dominant source of publications on council tax enforcement, the risk is that they have an unfair influence and frame the debate, excluding other relevant issues and perspectives. The pursuit of fair council tax enforcement becomes oversimplified, with debt advice painted as 'the good guys' in comparison with local authorities and enforcement agents.

In light of the criticisms outlined above, advocacy research must be approached with a justified level of scepticism. Although the changing context of funding and perceptions of evidence shed light on the reasons for some of these features, this does not negate the need for rigorous and balanced research on debt enforcement. Academic research, with no affiliation to either creditor or debtor organisations, has the potential to provide much-needed balance through a whole-systems approach. There are, nonetheless, valid criticisms to be made of some features of academic research, such as the lack of public access to research outputs and variations in methodological quality, as discussed in the next section. There is a place for all forms of evidence, and the most productive conversations about debt enforcement will be informed by multiple sources.

²⁵¹ McCormack (n 179) 102; Stevens (n 179) 243.

²⁵² *ibid.*

²⁵³ Sanderson (n 179).

To be clear, by identifying advocacy researchers as concerned individuals the intention is not to encourage research of a disinterested or positivist nature. By contrast, 'one may be deeply concerned about problems...yet still wish to see a rigorous and objective analysis of their dimensions.'²⁵⁴ It instead encourages research which seeks to understand *why* debt is enforced in certain ways, without prioritising either party to the tension between enforcement objectives and debtor welfare. The policy-based-evidence critique of advocacy research means that only certain types of enforcement attract attention, those which fit a defined campaign goal, such as the regulation of enforcement agents. But whilst so much energy and criticism has been directed at enforcement agents, people have been imprisoned for the same debt issue, with little attention or critique.

Finding the right balance between effective and reliable enforcement and welfare of people in debt will require collaboration between debt advice, who have the ear of the debtor population, and local authorities. Evidence which does not give an accurate assessment of the situation prevents this collaboration. The relationship between local authorities, local and national debt advice charities is discussed further in Chapter Seven.

Effective reform of council tax enforcement requires acceptance of its uncertainty and complexity; there are no obvious answers for how to maintain a vital funding stream for local government whilst protecting people in debt. It is submitted that research in this area would benefit from embracing the epistemological value of uncertainty which is both inevitable and a fundamental feature of knowledge.²⁵⁵ As argued by Gilbert, all parties involved in social issues should be 'cautious and modest in making empirical claims and passionate and personal in expressing policy views';²⁵⁶ advocacy research conflates these two actions.

²⁵⁴ Gilbert (n 179) 142.

²⁵⁵ Roy Bhaskar (1978), *A Realist Theory of Science*, Brighton: Harvester Press, cited in Stevens (n 179) 243.

²⁵⁶ Gilbert (n 179) 101.

ACADEMIC RESEARCH

Since 1995, Rona Epstein has published academic articles in legal journals seeking to raise awareness of the practice of imprisonment as an enforcement method for council tax arrears.²⁵⁷

The main strand of this research, which encompasses appeals against imprisonment for community charge and council tax, is that the regulations have been mis-applied, leading to unlawful imprisonments in large numbers which disproportionately affect vulnerable individuals. Epstein's first publication summarised the results of a study into judicial review hearings, concluding that in 90% of judicial reviews the imprisonment was found to be unlawful. In addition, she concluded that 67% of the sample that had been imprisoned were 'either on state benefit or had no income at all' with one in three 'either physically or mentally ill or disabled'.²⁵⁸ However, Epstein does not provide any information on the methods used to obtain or analyse this data. We can therefore see a greater level of independence and reduction in bias as compared to advocacy research, but a continuation of the lack of methodological transparency or reflexivity.

Epstein has consistently taken issue with the lack of procedural protections for debtors in committal hearings, writing overviews and critical accounts of key appeal cases. For example:

²⁵⁷ Rona Epstein, 'Punished for Being Poor' (1995) March *Legal Action*; Rona Epstein and Ian Wise, 'Poll Tax Committals and the European Court' (1995) 139 *Solicitors Journal* 588; Rona Epstein, 'Imprisonment for Debt: The Courts and the Poll Tax' (1998) 20 *The Journal of Social Welfare & Family Law* 165; Rona Epstein, 'Imprisonment for Debt - an Update' (2000) 5 *Coventry Law Journal* 62; Rona Epstein and Richard Wise, 'Imprisonment for Debt' (2002) 152 *New Law Journal*; Rona Epstein, 'Sentencing in Council Tax Defaults' [2011] *Criminal Law & Justice Weekly*; Rona Epstein, 'Mothers in Prison: The Sentencing of Mothers and the Rights of the Child' [2012] *Coventry Law Journal*; Rona Epstein, 'Imprisonment for Council Tax Default' *Local Government Lawyer* (5 June 2015) 1; Rona Epstein, 'Punishing the Poor: The Scandal of Imprisonment for Council Tax Debt' [2017] *Socialist Lawyer* 33; Lucy Baldwin and Rona Epstein, 'Short but Not Sweet: A Study of the Impact of Short Custodial Sentences on Mothers & Their Children' (De Mortfort University 2017); Rona Epstein, Sam Genen, 'Imprisonment for Debt' (2018) 181 *Criminal Law & Justice Weekly* 80.

²⁵⁸ Epstein, 'Punished for Being Poor' (n 257) 9.

Because tax arrears are a civil not a criminal matter the usual protections afforded defendants in the criminal justice system are not available to tax defaulters (Epstein, 1997). Protection for the first offender (Criminal Courts Act 1973, s.21(1)), the privilege against self-incrimination (Civil Evidence Act 1968 (c.74 s.14) are examples of such provisions which apply to protect the criminal but not the poll tax (or council tax) debtor. There is no requirement that a pre-sentence report be supplied to the court, so ill-health and family problems are not noted; there is no requirement that the court explain to the defaulter in open court and in ordinary language why it is passing a custodial sentence on him or her (Criminal Justice Act 1991, s.1(4)(b)). The public interest filter operated by the Crown Prosecution Service (offenders are less likely to be prosecuted if elderly or suffering from significant mental or physical ill-health) does not apply.²⁵⁹

Here, Epstein identifies the problematic position of imprisonment for council tax arrears between civil and criminal law. In Chapter Four I outline the concept of a punitive civil sanction, a legal mechanism which is a hybrid of civil and criminal law and examine how this hybridisation impacts protections for debtors when faced with imprisonment. In Chapters Five and Six I build upon Epstein's research in analysing a body of case law where imprisoned debtors appealed by way of judicial review to consider how appellate courts defined this legal sanction and how this definition impacted the rights and protections of debtors prior to the removal of committal in Wales.

Epstein has also played a significant role in some high-profile appeals against imprisonment, including the cases of *Aldous* and *Woolcock (No.2)* discussed in Chapters Five and Six. While in prison, Amanda Aldous responded to an advertisement for research participants in a project conducted by Epstein and the organisation Women in Prison.²⁶⁰ After receiving her response, Epstein assisted

²⁵⁹ Epstein, 'Imprisonment for Debt: The Courts and the Poll Tax' (n 257) 172; Epstein, 'Imprisonment for Council Tax Default' (n 257); Epstein and Genen (n 257).

²⁶⁰ Epstein, 'Mothers in Prison: The Sentencing of Mothers and the Rights of the Child' (n 257) 25.

Aldous in instructing a legal representative to pursue a successful appeal by way of judicial review, leading to her release. Similarly, a short article written by Epstein was circulated to all women's' prisons and was read by Melanie Woolcock. Woolcock contacted Epstein for assistance with her case, and she was put in contact with the Centre for Criminal Appeals who then pursued her two appeals by way of judicial review, considered in Chapter Five.²⁶¹

In more recent years Epstein has considered council tax imprisonments in the wider context of women who receive short custodial sentences. In a study which considered the experiences of mothers sentenced for non-violent offences, Epstein included the reflections of two women who had been imprisoned for council tax non-payment, highlighting the significant impact on their own welfare and that of their families and dependents.²⁶²

Epstein's research has been something of a lone voice in highlighting the theoretical and practical problems of using imprisonment for council tax arrears and her contribution is significant. This thesis seeks to develop these criticisms through empirical investigations of the process that led to imprisonment, including the perspectives of local authorities and the courts which are absent in Epstein's work. It also seeks to make claims which are empirically warranted and informed by methodological transparency and reflexivity.

GOVERNMENT RESEARCH

In contrast to advocacy research, which tends to focus entirely on the experience of individuals in debt, a small number of research publications²⁶³ have considered the role of local authorities, who take the role of 'creditors' responsible for the enforcement of council tax. These research projects were all conducted or

²⁶¹ Baldwin and Epstein (n 257).

²⁶² Baldwin and Epstein (n 257).

²⁶³ Nicola Dominy and Elaine Kempson, 'Can't Pay or Won't Pay? A Review of Creditor and Debtor Approaches to the Non-Payment of Bills' (University of Bristol 2003) 4/03; Greenall and others (n 104); Collard and others (n 89).

commissioned by the Welsh Government or UK Government; their reports are considerable in length and draw on multiple research methods, including primary and secondary analysis. To their credit, they also account for methodological choices to a much greater extent than advocacy research reports, but it is nonetheless important to reflect upon the extent to which their connections to government may influence the framing of the research and its findings.

Dominy and Kempson²⁶⁴ aimed to develop typologies of the different kinds of creditors and debtors to understand why some individuals do not pay their debts and how certain organisations successfully enforce payment where others struggle. The research was commissioned by the Lord Chancellor's Department in response to the Report of the First Phase of the Enforcement Review, which had identified that those concerned with enforcement of debts were 'not good at identifying which debtors have the ability to pay and which do not' and that those so minded could exploit enforcement systems to avoid payment if they knew their weaknesses.²⁶⁵ This was therefore one of the earliest acknowledgments in research that debt enforcement decisions rely heavily on categorisation of individuals based on the often limited information about their circumstances that is available to the creditor organisation.

In terms of creditors, they defined three types according to their approach to enforcement: 'holistic', 'hard business' and 'one-size-fits-all'. This was based on analysis of interviews with staff in debt recovery sections of ten organisations, two of which were local authorities, which explored how decisions are made about the method of debt recovery to use in different circumstances. They identified local authorities as most commonly falling within types one and three, which highlights the impact of different management cultures across local authorities, even though as public authorities they all operate within similarly strict budgetary limitations.

In terms of debtors, they were sub-divided into different types according to their level of ability and commitment to pay their bills or arrears. The emphasis on defining

²⁶⁴ Dominy and Kempson (n 263).

²⁶⁵ Ibid 1.

different types of debtors stemmed from a perception, confirmed during interviews with creditors, that the well-established dichotomy of ‘can’t pay’ versus ‘won’t pay’ was ‘something of an oversimplification’. By reference to sixty-four interviews with debtors, some from previous research and some specific to this project, they developed a map of debtors according to three different financial realities (‘has money to pay’, ‘had money to pay when fell into arrears but not now’, and ‘did not have money to pay when fell into arrears’). This was cross-referenced with the extent of their intention to pay their arrears. It is not made explicit how the interviews informed the development of these categories. The map is presented below:

Table 2.3: A map of can’t pay won’t pay

| | Has money to pay | Had money to pay when fell into arrears, not now | Did not have money to pay when fell into arrears |
|----------------------------------|-------------------------|---------------------------------------------------------|---------------------------------------------------------|
| No intention to pay | | | |
| Withholding on principle | Won’t | Won’t/ but can’t | Won’t/ but can’t |
| Withholding – dispute | -- | -- | -- |
| Withholding – ex-partners | Won’t | Won’t/ but can’t | Won’t/ but can’t |
| Working the system | Won’t | Won’t/ but can’t | Won’t/ but can’t |
| Ducking responsibility | Won’t | Won’t/ but can’t | |
| Intend to pay | | | |
| Disorganised | -- | -- | -- |
| Change in circumstances | | | Can’t |
| Long-term low income | | | Can’t |
| Mental health problems | Can’t | Can’t | Can’t |

Key  = should not be considered either can’t or won’t pay

Although it may serve as an improvement on the binary of ‘can’t pay’ versus ‘won’t pay’, this new map creates a possible twenty-seven categories of debtor, and arguably still does not reflect all the possible scenarios or circumstances which cause or contribute to debt. It is difficult to strike a balance between an exhaustive typology and a typology which allows room for discretion so as not to be overly prescriptive. This begs the question of whether typologies of this kind are useful, other than to indirectly draw attention to the complexities of debt and the individualised nature of its causes?

In addition to limitations of the typology, some claims are made without sufficient warranting. For example:

The proportion of won’t pays is higher for some types of commitment than it is for others. The commitments that tend to be afforded the lowest priority are council tax, water bills and credit cards. Council tax and water bills have a high proportion of people who object in principle to paying...²⁶⁶

This claim is anecdotal at best; no evidence is provided to support it. This has the effect of perpetuating attitudes towards council tax enforcement which could encourage use of more punitive methods, such as imprisonment. The threat of large-scale objection, as seen in response to the community charge (discussed in Chapter 1), makes council tax a vulnerable revenue source, and the extent of this perceived vulnerability may influence enforcement decisions. For this reason, any claims of this kind must be grounded in clear evidence. The relationship between objections to the tax and the deterrent functions of committal are discussed further in Chapter Five.

Shortly before the removal of committal in Wales, Greenall et al²⁶⁷ of the Welsh Government Internal Research Programme conducted an in-depth piece of research which aimed to identify effective approaches to dealing with council tax arrears and

²⁶⁶ Dominy and Kempson (n 263) 8.

²⁶⁷ Greenall, Prosser and Thomas (n 104).

understand the rationale behind the methods used.²⁶⁸ This research was part of the 2016-2021 Programme for Government titled 'Taking Wales Forward', which made specific commitments to 'make council tax fairer'.²⁶⁹

The project consisted of a synthesis of existing evidence, supplemented by analysis of telephone interviews with Welsh Revenues and Benefits Managers, and annual local authority performance and benchmarking statistics made available to the researchers for the financial year 2016/17. As noted in Chapter One, these benchmarking statistics on the use of different enforcement methods are not made publicly available. The initial findings were tested during a focus group with stakeholders.

The evidence synthesis included in the research report highlights the general lack of published research on legal enforcement of council tax arrears. The scope of the review is broad, including third sector literature on debtor experiences and academic literature on the impact of austerity on financial capability and national levels of debt. Reference is made to research on complaints and professionalism by the Civil Enforcement Association (CIVEA), who represent bailiffs, giving a more balanced perspective to the review than is seen in advocacy research by including a range of interested parties.²⁷⁰ This being said, the dominant source of references is the debt advice sector, such as Citizens Advice and StepChange, which highlights the extent to which advocacy research frames the discussion around debt enforcement.

Twenty-three relevant documents in total were reviewed, including several on the topic of time-banking, a novel currency system based on voluntary work to address social problems, which has never been used in the council tax context. It is therefore clear that the existing literature on the specific focus of the research was minimal, prompting a much broader review of tangential factors and innovative rather than existing enforcement methods.

²⁶⁸ *ibid* 5.

²⁶⁹ *Ibid* 4.

²⁷⁰ Greenall, Prosser and Thomas (n 104) 33.

The researchers achieved a one hundred per cent response rate for interviews, producing a qualitative data set which represented the views of Revenue and Benefits staff of all twenty-two local authorities. Interview data highlighted a range of issues facing local authorities as well as proposals for reform grounded in their experiences. Although the potential limitations of a quantitative approach to assessing debt enforcement practices have been outlined earlier in this chapter, this report did highlight some useful patterns, or lack thereof, in the use of committal by different local authorities. For example, benchmarking data suggested that those authorities who do pursue committal tend to do so frequently; nine of the twenty-one authorities who provided data had pursued more than ten committal summonses in 2016-17, whereas six authorities had sought fewer than ten, the remainder not pursuing committal at all.²⁷¹ Within these figures was one unnamed authority which had pursued ninety-five committals in a year, accounting for almost one third of all the committal summons in that year across Wales.²⁷² Some authorities had ceased pursuing committals, while others had started using them again or continued their use,²⁷³ demonstrating that, prior to the public consultation on the continued use of imprisonment, there was no real consensus across local authorities about the suitability of imprisonment as an enforcement method.

Despite the value of this contribution to a pressing evidence need, it is important to reflect on the limitations of research conducted by staff of national government and the impact this may have on the findings. The high response rate to interview requests is likely to be a result of the letter of endorsement from the Local Taxation Policy team of the Welsh Government which was circulated to all target recipients. This may have introduced an element of obligation into the decision to participate. In addition, the relationship between the research population and the researchers may have been influenced by the financial dependence of the former upon the latter. The Research Support Grant (RSG) of £3.5billion per annum provided by Welsh Government to the local authorities of Wales is their largest single revenue source,

²⁷¹ Ibid 61.

²⁷² Ibid 109.

²⁷³ Ibid 109.

assessed every year based on the needs of each council.²⁷⁴ This intrinsic link and power imbalance between the Welsh Government and the local authorities of Wales could have influenced the responses of participants in this study. In addition, the framing of the research as part of the Welsh Government commitment to ‘make council tax fairer’ presupposes problems with the status quo as currently administered by local authorities, which may also have influenced their responses. A similarly negative framing was used in the subsequent consultation on the continued use of imprisonment (discussed in Chapters Three and Six). Although the findings do include critical views from local authorities, it is difficult to gauge the extent to which their responses were limited by the status of the interviewers as representatives of the national government, as opposed to independent researchers without a stake in the findings of the research.

Alongside the 2018 public consultation on the removal of committal in Wales, the First Minister commissioned an evidence review by the Wales Centre for Public Policy (WCPP) to understand ‘how public services and their contracted partners in Wales could better respond to vulnerable debtors, especially those subject to prosecution and prison.’²⁷⁵ The WCPP is an independent research centre but has a close working relationship with policy makers and practitioners.²⁷⁶ It typically synthesises existing evidence on a topic, rather than conducting primary research, as was the case for this review. The research was delivered through a partnership with the Personal Finance Research Centre (University of Bristol) and focused on council tax and rent arrears to local authorities and registered social landlords. These two forms of debt were grouped on the basis of being interrelated and both having severe potential enforcement methods, including imprisonment and property repossession.²⁷⁷ The report was published after the announcement by the Cabinet Secretary for Finance, on 1 November 2018, of his intention to bring forward

²⁷⁴ Welsh Government (n 15) 102.

²⁷⁵ Collard, Hodges and Worthington (n 89) 5.

²⁷⁶ *ibid* 2.

²⁷⁷ *Ibid* 5.

legislation to prevent the use of imprisonment for council tax arrears from 1 April 2019.²⁷⁸

Whilst stressing that committal for council tax arrears was a rare occurrence in Wales, this report highlighted several useful themes and areas where improvements could be made to ensure early intervention by local authorities in arrears situations. For example, as highlighted by Dominy and Kempson, severe enforcement action often comes about because of a lack of information about the individual in debt, which raises an interesting point of comparison with the enforcement of rent arrears:

At present, local authorities in Wales may rely on engagement by taxpayers in order to identify vulnerability...For registered social landlords, there are more opportunities to get to know tenants and identify potential vulnerability. Several registered social landlords in Wales use vulnerability checklists and assessments pre-tenancy and throughout the tenancy to collect further information about potential vulnerability.²⁷⁹

Unlike with rental agreements, the local authority may know nothing about council taxpayers or their circumstances unless they receive exemptions or discounts. This means that, if they fall into arrears but do not make contact to explain the situation, the local authority is likely to proceed with enforcement on the basis of assumptions about the individual which may not be accurate (discussed further in Chapter Seven). This is a major challenge for fair and appropriate enforcement.

The review reuses benchmarking data published by Greenall et al on the frequency of use of each enforcement method, whilst recommending a need for more evidence of the individuals behind these figures and their characteristics. There is also acknowledgment of the limitations of advocacy research:

²⁷⁸ 'Written Statement - Removal of the Sanction of Imprisonment for the Non-Payment of Council Tax (1 November 2018)' (Welsh Government 2018) <<https://gov.wales/written-statement-removal-sanction-imprisonment-non-payment-council-tax>> accessed 20 January 2022.

²⁷⁹ Collard, Hodges and Worthington (n 89) 24.

We know very little about the characteristics of the households who find themselves unable to pay their council tax...some information is available about those who have sought advice through Citizens Advice, but this does not provide a complete picture.²⁸⁰

One further study commissioned by the Welsh Government consisted of a Randomised Control Trial to assess the impact of different technologies to encourage council taxpayers to pay by Direct Debit. The Behavioural Insights Team sent text messages to one group of taxpayers which included social norms ('Did you know 66% of households in Newport pay by Direct Debit?'), highlighted the ease of paying by Direct Debit, and reminded residents that Council Tax is spent on local public services. They found that individuals who received these messages were actually less likely to make any kind of payment during the trial than the control group who did not receive these text messages. Following further analysis against the Welsh Index of Multiple Deprivation, they reached the following conclusion:

There was a positive correlation with deprivation. That is, the more deprived an area is, the less likely people in that area were to pay following the text messages. An early hypothesis therefore could be that text messages could be seen as helpful by people with enough money to pay the bill but could be seen as an unhelpful and unwanted demand for payment by people who have less disposable income, which creates an adverse effect on rates of payment.²⁸¹

Although this research did not relate to the use of imprisonment, it demonstrates the tension between the objective of local authorities to optimise collection processes and the social reality of poverty, which overrides any attempts to induce behavioural change in those who genuinely cannot pay.

²⁸⁰ Ibid 21.

²⁸¹ 'Applying Behavioural Insights to Council Tax in Wales' (The Behavioural Insights Team 2016) 19.

Overall, these reports made valuable contributions to our understanding of the debt enforcement process generally, and to the use of imprisonment for council tax enforcement. In the years leading up to the removal of imprisonment in Wales, research was being conducted on the enforcement of council tax arrears and the views and understandings of local authorities were included in discussions, but only as result of a clear political agenda in Wales to end this enforcement practice. This perhaps obscures the fact that, for the three decades prior to the public consultation, this legal phenomenon received very little attention or critique, save for the work of Epstein.

This review has demonstrated that research to date on council tax enforcement has had limitations in terms of its motivations, research methods and the level of prioritisation of imprisonment. The largest gap in the evidence base is for research into the assumptions which drove the use of imprisonment and justified its use conducted by those without a vested interest in the findings of the research. This thesis draws together the procedural flaws first identified by Epstein with two evidential sources from local authorities in Wales. It builds upon the work of advocacy research on the impact of imprisonment on debtors in an attempt to better understand the decision-making process which can produce such negative outcomes.

CHAPTER THREE – RESEARCH DESIGN

In this chapter I identify and justify each of the assumptions and decisions which informed my research design, whilst reflecting on the inherent limitations and opportunities for future research. Such methodological assumptions are informed by the research discipline, philosophy, the type of data sought, the method of data collection and the approach to analysis, and as a result produce a unique perspective. In structuring this chapter I adopt Murphy and McGee's elements of a research project, setting out the research questions, methodology and methods which collectively form the research design.²⁸²

RESEARCH QUESTIONS

As outlined in Chapter Two, research on enforcement of council tax to date has failed to adequately problematise the use of imprisonment as a method of enforcement. In addition, current research does not explain how or why it was used in Wales until 2019. The dominant approach in research on debt enforcement to date has been to measure or quantify the number of people in council tax arrears or the frequency of use of each enforcement method. In response to this quantitative approach, this research project sought to understand *how* imprisonment was used in Wales for non-payment of council tax and how it was *justified*. In terms of the impact of the decision to remove committal, it also considered what might be the legacy of this kind of sanction. The research questions were brought into focus over time, but can be summarised as follows:

1. How were committal proceedings and imprisonment defined in law, and what impact did this definition have on the rights and procedural protections of debtors?

²⁸² Brendon Murphy and Jeffrey McGee, 'Phronetic Legal Inquiry: An Effective Design for Law and Society Research?' 24 Griffith Law Review 288, 290.

2. How was committal justified as an enforcement method for council tax arrears in Wales?
3. What factors influenced local authorities in Wales when they made decisions about how to enforce payment of council tax arrears?
4. Why was committal removed as an enforcement method for council tax arrears in Wales in 2019?
5. What has been the impact of the removal of committal as an enforcement method for council tax arrears, and what does this suggest about the future of council tax enforcement in Wales?

The first question relates to England and Wales, and draws upon sources from this wider jurisdiction, whereas questions 2-5 relate specifically to practices in Wales. As can be seen from these questions, the focus of the research was to understand the 'how' and 'why' of this legal phenomenon, directing the methodology towards a qualitative approach, rather than a quantitative approach, which has dominated this research area to date. The overall aim of the research was to provide reflections based on empirical socio-legal data which could inform future reforms to legal enforcement of council tax in Wales.

METHODOLOGY

SOCIO-LEGAL RESEARCH

The discipline in which a researcher works inevitably influences assumptions and decisions as to methodology. Such disciplinary allegiances and methodological choices are also informed by funding arrangements and institutional links. These influences can be particularly strong for doctoral research, a formative stage where the researcher explores and finds their place within the academic community.

This research was completed within Cardiff University School of Law, a school with a strong tradition of socio-legal research, evidenced by its establishment of the *Journal of Law and Society* in 1974, the first exclusively socio-legal journal,²⁸³ and its close links to the Socio-Legal Studies Association (SLSA).

Funding was provided by the Economic and Social Research Council (ESRC), part of UK Research and Innovation (UKRI), a non-departmental public body funded by the UK Government.²⁸⁴ The ESRC has established a number of Doctoral Training Partnerships (DTPs) across the UK, including the Wales DTP which funded and oversaw this project. The Wales DTP provided a funded studentship on their Empirical Studies in Law Doctoral Pathway, including masters level research methods training. Academic training of this kind can be seen as part of the response to the threats to the socio-legal discipline, discussed further below. Empirical studies in law are a sub-category of socio-legal studies as not all socio-legal research contains an empirical element, that is, research which is based on what has been seen or experienced, rather than on pure theory.²⁸⁵

Legal research, in comparison with other disciplines, suffers from something of an identity crisis when it comes to making plain its methods, which translates into a 'lack of awareness about what legal scholars actually do.'²⁸⁶ Publications in this field often do not contain methods sections,²⁸⁷ despite the range of different approaches which make up the discipline and the established practice in many other disciplines of having what Murphy and McGee describe as 'explicitly scientific research designs'.²⁸⁸ Arthurs (1983) provides a useful visual map of the main domains of legal research, shown below in Figure 9, with positionality dependent on the degree to which the research is applied versus pure, doctrinal versus interdisciplinary.²⁸⁹

²⁸³ Sally Wheeler, 'Socio-Legal Studies in 2020' (2020) 47 *Journal of Law and Society*, 210.

²⁸⁴ <https://esrc.ukri.org/about-us/what-we-do/>

²⁸⁵ <https://dictionary.cambridge.org/dictionary/english/empirical>

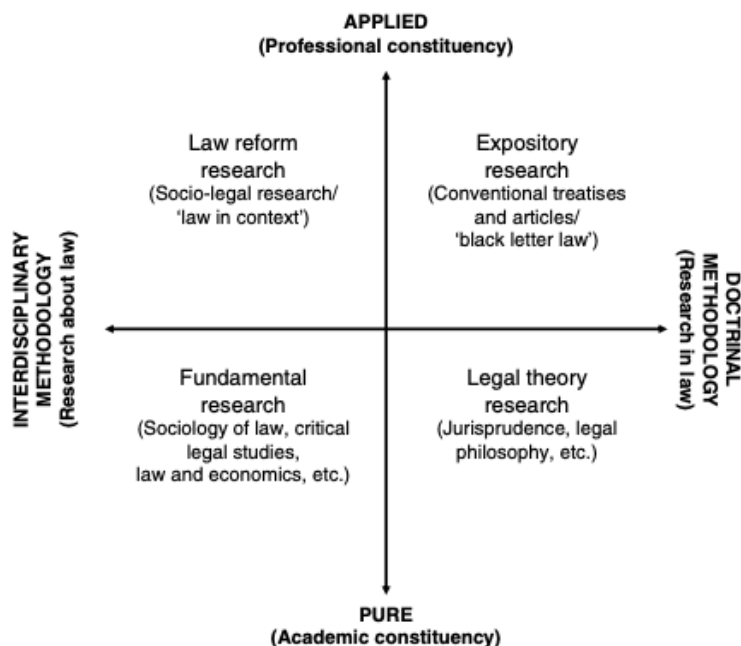
²⁸⁶ Paul Chynoweth, 'Legal Research', *Advanced Research Methods in the Built Environment* (Blackwell Publishing 2008) 28; Murphy and McGee (n 282).

²⁸⁷ Chynoweth (n 286) 37.

²⁸⁸ Murphy and McGee (n 282) 289.

²⁸⁹ Chynoweth (n 286) 29.

Figure 9: Arthurs Map of Legal Research Styles (1983), taken from Chynoweth (2008)



The dominant form of legal research has historically been doctrinal, often known as ‘black letter law’ because of its emphasis on formal legal sources such as statutes and case law. The aim of doctrinal research is, broadly, to identify what the law is and how it would most likely be applied in a range of different scenarios, clarifying any ambiguities and explicating the relationships between complex rules.²⁹⁰ Such ‘systematic formulations’²⁹¹ are known as doctrines which rely on approval and consensus within the legal academic community for their validity.²⁹² This practical, internal approach to the law goes some way to explaining the prominence of the doctrinal method because of its overlap with the kind of research conducted by practicing solicitors and barristers, and the emphasis in undergraduate legal education on training future legal practitioners.²⁹³

²⁹⁰ *ibid.*

²⁹¹ *Ibid.*

²⁹² *ibid* 30.

²⁹³ *ibid* 32.

By contrast, the motivation of socio-legal research is to investigate the law in context and in action. It has been defined as both a paradigm and a movement,²⁹⁴ and is frequently identified by comparison to doctrinal legal research. Comprising both quantitative and qualitative data, Adler defines socio-legal research as ‘the branch of legal scholarship that uses the methods of the social sciences to throw light on the workings of law and legal institutions.’²⁹⁵ With a focus on empirical exploration²⁹⁶ of the operation of the law in modern life, it is often referred to as ‘law in context’²⁹⁷ because of its external perspective on legal processes.²⁹⁸ Where doctrinal research predominantly seeks to identify what the law is, socio-legal research more commonly aims to encourage reform of the written law, its administration or application.²⁹⁹ Although disciplinary influences are significant, it must be noted that the space between such disciplines can often be overstated and conceiving of doctrinal and socio-legal research as opposites is unhelpful; much doctrinal legal research is undoubtedly normative and advocates for reform or reinterpretation, as much as some socio-legal work focuses heavily on identifying what the law is in under-researched areas.

A number of reports³⁰⁰ in the last two decades have warned against a threat to the ‘critical mass’ of socio-legal researchers in the UK, threatening the future success or growth of the discipline. This is often attributed to a lack of opportunities for legal scholars to obtain the social science research methods training needed to conduct empirical research projects. Empirical research on civil law issues, such as debt enforcement, have been identified as particularly rare in comparison with their criminal law counterpart. As Genn et al suggest, ‘there is no ‘civiology’ equivalent to

²⁹⁴ Wheeler (n 283) 211.

²⁹⁵ Michael Adler, ‘Recognising the Problem: Socio-Legal Research Training in the UK’ (University of Edinburgh 2007) 1.

²⁹⁶ Chynoweth (n 286) 30.

²⁹⁷ Ibid 29.

²⁹⁸ Michael Adler, ‘A Socio-Legal Approach to Administrative Justice’ (2003) 25 Law & Policy 323, 345.

²⁹⁹ Chynoweth (n 286) 32.

³⁰⁰ Hazel Genn and others, ‘Law in the Real World: Improving Our Understanding of How Law Works ; Final Report and Recommendations’ (Nuffield Foundation 2006); Adler (n 295); Paddy Hillyard, ‘Law’s Empire: Socio-Legal Empirical Research in the Twenty-First Century’ (2006) 34 Journal of Law and Society 266.

criminology', despite the range of issues which arise and 'myriad avenues of redress';³⁰¹ this could be attributed to 'the relative paucity of centrally maintained basic administrative data on civil justice issues'.³⁰² The combined lack of publicly available administrative data on council tax enforcement and socio-legal research on civil law mechanisms may go some way to explain the dominance of research by the third-sector in this area (characterised as 'advocacy literature' and discussed in Chapter Two), with only governmental researchers able to leverage access to contemporaneous data on council tax enforcement and front-line decision making.

In reviewing the existing literature on council tax enforcement, it became clear that the 'evidence gap', identification of which is the typical aim of a literature review, was a methodological evidence gap. Advocacy research suffers from intrinsic bias and lacks rigour, whilst attempting to condense analysis of a complex social issue into numerical form. Government researchers are alone in having access to local authorities but their political and economic relationship with research participants influences the nature of any findings. Epstein can be seen as a 'lone voice' in providing an academic perspective on council tax, but inhabits a doctrinal discipline which limits her sphere of interest to case law and means she does not investigate the assumptions and decisions of local authorities which mean such cases ever reach a court.

Taking into account the context of the project as set out above, the research project presented in this thesis takes a socio-legal approach to the legal phenomenon of debt enforcement, using the enforcement of council tax in Wales as a case study. It is submitted that the analysis presented in Chapters Five, Six, Seven and Eight would not have been generated without a socio-legal perspective. Such an approach required me to become comfortable at the borders between law and sociological methods, navigating the complexities of black letter law in the regulations of council tax enforcement and the challenges of designing an empirical project involving in-depth fieldwork with legal personnel. This interdisciplinarity was only possible

³⁰¹ Genn and others (n 300) 35.

³⁰² Ibid.

because of the dedicated training received through my ESRC studentship. In order to address the lack of ‘civiology’ research discussed above, there is an ongoing need to provide tailored training in social research methods to researchers from adjacent disciplines such as law, and vice versa, to support social researchers in increasing legal research skills. This bolstering of the critical mass of socio-legal researchers may in turn increase academic interest in civil law issues, raising the visibility of the area for future researchers. It may also increase access to administrative data and civil legal personnel through increased pressure on existing gatekeepers.

I adopt the definition of socio-legal which sees ‘socio’ as signalling ‘an interface with the context in which the legal existed’,³⁰³ which for this project relates to the geographical, political, social, and economic context of Wales. The phenomenon of debt enforcement is a particularly good example of civil justice being ‘the stuff of everyday family, social and business life’,³⁰⁴ which warrants thorough empirical exploration. By employing concepts drawn from sociology (discussed further in Chapter Four) I attempt to conduct what Wacquant terms ‘civil sociology’: ‘an effort to deploy tools of social science to engage in, and bear upon, a current public debate of frontline societal significance’.³⁰⁵ The fact that imprisonment for council tax arrears occupies a problematic middle-ground between criminal law and its under-researched civil law counterpart provides an even greater justification for technical exploration and empirical oversight.

Despite the line often drawn between doctrinal and socio-legal research, the nature of this research topic and its relative academic neglect to date demands a foundation in doctrinal methods. For critique to have optimum value in areas of law which are under-researched it requires a grounding in the fundamental legal rules, before moving on to interrogate its operation. Although Chynoweth’s assertion that doctrinal analysis is the defining characteristic of all legal research overstates its position,³⁰⁶ it is an important element in legal areas which have persisted relatively unquestioned,

³⁰³ Wheeler (n 283) 211.

³⁰⁴ Genn and others (n 300) 34.

³⁰⁵ Wacquant (n 171) 161.

³⁰⁶ Chynoweth (n 286) 31.

something which has been acknowledged by socio-legal scholars.³⁰⁷ Rather than seeing socio-legal research as a rejection of the traditions of doctrinal analysis, I see the two approaches as being complementary and parallel when researching legal phenomena like debt enforcement mechanisms where little is known about both what the law is or how it operates.

The thesis therefore combines traditional doctrinal methods with the concerns of socio-legal research by analysing both the formal sources of law and their social realities for creditor and debtor. Within the field of debt enforcement, which is itself relatively unexplored, I was drawn to the taken-for-granted, and what Halliday and Morgan describe as ‘the background assumptions about legality which structure and inform everyday thoughts and actions.’³⁰⁸ In Chapter One I set out the legal framework of council tax billing and enforcement, using the regulations to explain how the law is applied. In Chapter Five I present doctrinal analysis of a body of case law relating to the judicial review of committal decisions in the case of council tax arrears, drawing out the procedural rules for imprisonment hearings and how the legal tests have been applied in different scenarios. These elements of the thesis act as a foundation for Chapters Six and Seven, in which I use responses to a public consultation and transcripts of interviews with local authorities in Wales as evidence of the operation of the formal sources of law on debt enforcement (regulations and case law) *in context*.

A project which combines such a variety of sources must reflect on fundamental assumptions about what constitutes reality and knowledge, leading me to adopt a social constructionist approach.

³⁰⁷ Fiona Cownie ‘Legal Academics: culture and identities’ Oxford: Hart (2004)

³⁰⁸ Simon Halliday and Bronwen Morgan, ‘I Fought the Law and the Law Won? Legal Consciousness and the Critical Imagination’ (2013) 66 Current Legal Problems 1.

SOCIAL CONSTRUCTIONISM

The methodology of this thesis was built upon the hybrid ontological and epistemological perspective of social constructionism, which means rejecting the existence of an objective reality, focusing on how the research phenomenon is socially constructed by the individuals involved,³⁰⁹ and how this process of social construction can, to a greater or lesser extent, be made plain through empirical methods. Social constructionism is consistent with and complementary to a socio-legal approach, because of the distinction drawn in socio-legal research between legal definitions of objects and subject matter, and between formal sources of law and social meanings and experiences of those at different orientations to the law,³¹⁰ all of which are valid constructions of what the law is and does. As argued by Gurney, 'social reality is variable between social actors located in specific social contexts, times and places.'³¹¹

Social constructionism has been a commonly used perspective in social science research since Berger and Luckmann sought to 'redefine the problems and tasks of the sociology of knowledge' in 1966.³¹² In defining the difference between reality for the man in the street, the sociologist and the philosopher, they argued that the role of the sociologist is to ask how it is that a notion has come to be taken for granted in one society, and not in another, how its reality is maintained in one society but not another, and how such a reality may be lost to an individual or group.³¹³ In doing so, the aim is to understand 'the processes by which this is done in such a way that a taken-for-granted "reality" congeals for the man in the street.'³¹⁴ At the highest level, this orientation to knowledge is directly relevant for the practice of committal which

³⁰⁹ M Alvesson and K Skoldberg, *Reflexive Methodology: New Vistas for Qualitative Research* (Sage 2009) 23.

³¹⁰ Patricia Ewick and Susan S Silbey, *The Common Place of Law: Stories from Everyday Life* (University of Chicago Press 1998).

³¹¹ Craig Gurney, 'Lowering the Drawbridge: Metaphor and Analogy in the Social Construction of Home Ownership' (1999) 36 *Urban Studies* 1705, 1706.

³¹² Peter L Berger and Thomas Luckmann, *The Social Construction of Reality: A Treatise in the Sociology of Knowledge* (Open Road Integrated Media) 50.

³¹³ *ibid* 20.

³¹⁴ *ibid* 22.

has been removed in Wales, but is still available and continues to be used in England, and for a case study of Wales shortly after abolition of a sanction, where a liminal space between worlds in which the sanction did and did not exist is most potent.

Berger and Luckmann defined two stages of social constructionism: habituation and institutionalization. Habituation is the repetition of any action, producing a pattern of action which can be later reproduced with minimal effort.³¹⁵ The benefit of this repetition is psychological, in that the individual's choices become narrowed, rendering it unnecessary for every situation to be defined anew.³¹⁶ At the stage at which multiple actors share and reciprocate habituations, it is argued that these patterns and shortcuts have become institutionalised, and that at an institutional level, 'actions of type X will be performed by actors of type X.'³¹⁷ A further layer of historical institutionalisation occurs as these habituations are reciprocated over time, forming a shared history.³¹⁸ Berger and Luckmann provide the following somewhat extreme analogy from a legal context, which is instructive in relation to the ideas of coercion and deterrence which inform this thesis:

'The law may provide that anyone who breaks the incest taboo will have his head chopped off. This provision may be necessary because there have been cases when individuals offended against the taboo. It is unlikely that this sanction will have to be invoked continuously...It makes little sense, therefore, to say that human sexuality is socially controlled by beheading certain individuals. Rather, human sexuality is socially controlled by its institutionalization in the course of the particular history in question.'³¹⁹

We will see in Chapter Seven how local authorities value the idea of institutionalised deterrence as an essential function of council tax enforcement, whereby taxpayers

³¹⁵ *ibid* 119-120.

³¹⁶ *Ibid* 119-120.

³¹⁷ *Ibid* 122.

³¹⁸ *Ibid* 123-4.

³¹⁹ *Ibid* 123-4.

must anticipate that they will be imprisoned to encourage payment of arrears, but also how this idea has become institutionalised within local authority staff and informs their ideas about future enforcement reform.

Some have been dismissive of social constructionism because of its radical perspective on reality. It has been pejoratively labelled as “extreme relativism and reductionism”³²⁰ because in its most extreme form, so-called “strong constructionism”,³²¹ it would reject the objective reality of concepts such as debt, which some would argue has achieved an elevated status and recognition as a fundamental aspect of modern society. Burr questions how we are able to decide between alternative perspectives if, for example, one group argues that they are oppressed, but oppression is merely a social construct, ‘which can have no greater claim to truth than any other.’³²² In terms of council tax arrears as a form of debt, we have seen in Chapter One that levels of council tax payable are politically determined, meaning that indebtedness in this context derives from a tax that is socially determined at the ballot box. Social constructionism permits such questioning of the fixed nature of concepts like debt and their origins.

This being said, an alignment with social constructionism brings with it the risk of alienating different stakeholders involved in the enforcement of council tax arrears, who may become disillusioned with research which is not built upon an assumption that valid debts are real, because their professional roles may be contingent on the reality of the finance system. However, Burr goes further in arguing that:

‘There is no single description which would be adequate for all the different kinds of writer who I shall refer to as social constructionist. This is because, although different writers may share some characteristics with others, there is not really anything that they *all* have in common.’³²³

³²⁰ Gurney (n 311) 1706.

³²¹ T Pernecky, ‘Constructionism: Critical Pointers for Tourism Studies’ (2012) 39 *Annals of Tourism Research* 1116, 1125.

³²² Gurney (n 311) citing V Burr, *An Introduction to Social Constructionism* (Routledge 1995) 14.

³²³ *Ibid* 2.

We can see social constructionism as an overarching descriptor for multiple viewpoints which share the following fundamental assumptions: a critical stance on knowledge, historically and culturally specific understandings, knowledge as sustained by social processes and acknowledgement of the close relationship between knowledge and social action.³²⁴

However, it has been shown in Chapter Two how quantitative research with a positivist perspective on knowledge has dominated the evidence base on debt enforcement by local authorities. In the analysis chapters to follow, it will be shown that these ideas about what constitutes robust evidence have permeated into the judiciary and into local authorities who enforce council tax. Under a positivist empiricist approach, evidence is purely based on measurement of what has been observed, for example through statistics on the number of complaints submitted about enforcement agents, and the aim is to make generalisable conclusions about all of debt enforcement. It is submitted that a weak social constructionist approach,³²⁵ which holds space for the validity of concepts such as debt for those involved in its creation and administration but sees this as secondary to locally created meanings, has the capacity to be most disruptive to dominant narratives. It also sheds light on the practices which sit behind high-level measures.

As we have seen in Chapter One, there are a range of options available in the enforcement of council tax arrears which can be identified in the regulations under which it operates. However, what sits behind these regulations are another set of categories in which debtors are placed and have significance for how their arrears will be processed and the procedural protections they will be afforded. These categories are not specified in law (and therefore would be overlooked by a purely doctrinal analysis), but are socially constructed by local authority enforcement staff, tacitly agreed upon and recursively habituated and supported through their work over time. These constructions will be brought to light in Chapters Five to Eight.

³²⁴ Ibid 3-5.

³²⁵ Pernecky (n 321) 1125.

Furthermore, by paying attention to the structural causes which influence and contribute to the development of habitualizations which become institutionalized, I argue that it is possible to identify commonalities between the work of different stakeholders involved in debt enforcement, which could engender greater humility and more effective collaboration between parties with varied professional aims. The same pressures of austerity which have created the trend for advocacy research, with all the methodological limitations identified in Chapter Two, can be seen in the inadequate time allocated to courts to consider committal cases in Chapter Five, and in the work of local authority staff as street-level bureaucrats in Chapter Seven. Attention to the ways in which different parties create meaning highlights the reasons why they often simplify their roles and the options available to them because, despite having the skills, they do not have the resources to complete holistic assessments of every case.

QUALITATIVE RESEARCH

As noted by Murphy and McGee, socio-legal research is ‘potentially vast in scope, ranging from empirical quantitative methods, through to pure philosophical inquiry’.³²⁶ The approach of this project was to use qualitative methods of data collection and analysis to respond to the research questions. Qualitative research uses words, including both written and spoken language, as its data source.³²⁷ This is distinct from quantitative research, which may use textual sources, but converts such material into a numerical form so that it can be ranked, compared, and subjected to statistical testing. Whereas quantitative research often aims to make claims which can be generalised to the population, qualitative research seeks local meanings and knowledge gathered in its unique context.³²⁸ This is consistent with the social constructionist epistemology justified above, as a fundamental tenet of the qualitative paradigm is that it does not ‘assume that there is one correct version of reality or

³²⁶ Murphy and McGee (n 282) 289.

³²⁷ Virginia Braun and Victoria Clarke, *Successful Qualitative Research: A Practical Guide for Beginners* (Sage Publications Ltd 2013) 4.

³²⁸ Braun and Clarke (n 327) 5.

knowledge'.³²⁹ Although the focus was on meaning drawn from spoken and written text, the analysis does make use of numerical data. Crucially, this numerical data is utilised to develop an understanding of the justifications and reasoning behind the use of committal. For example, in Chapter Six, I break down the statistical figures discussed in the case of *Woolcock (No.2)* to understand how statistics were used to bolster an argument that the problems with committal were not sufficiently widespread to warrant intervention. In this way, the statistics, tables, and diagrams I present use numerical data *critically*, and as another form of evidence on the justifications for committal as an enforcement method. I do not use numerical data to make generalisable conclusions about specific research populations, as the numerical data to make such conclusions reliably was not available, and most importantly, because this was not the overall objective of the research. Instead, I seek to highlight how values and assumptions can be seen in the way in which numerical data is used as evidence, consistent with a broader privileging of quantitative data in this area.

CONCEPTS OF QUALITY IN SOCIAL RESEARCH

As discussed above, research methodology is comprised of multiple assumptions about knowledge, one of the most important being assumptions about what amounts to high quality research. In designing and conducting this research project, the aim throughout was to achieve an analysis which is plausible, compelling, coherent and grounded in the data.³³⁰ The concepts of replicability and generalisability, so often held out as the markers of rigour and quality in research,³³¹ did not serve the aims of this particular project because of its qualitative sensibility and focus on process and meaning, as distinct from cause and effect.³³² The overall aim in terms of quality is summed up well by this quote:

³²⁹ Braun and Clarke (n 327) 6.

³³⁰ *ibid* 21.

³³¹ *ibid* 278.

³³² *ibid* 9-10.

‘[a process of] bricolage where the situated, subjective, knowledgeable, inventive researcher selects and uses the best of a wide variety of tools, techniques and theories at their disposal to collect data and tell a story about their research object which answers their research question.’³³³

In the design of the methodology, I considered some of the dominant concepts which are offered up as markers of quality in research, assessing whether they served this ‘bricolage’ approach and whether they aligned with a truly qualitative exploration.

DATA SATURATION

It is common in social research to see methodologies which are justified as valid because they allowed the research to reach a stage of ‘data saturation’. This is the idea that when enough data has been collected there will be no need to continue as the level of novelty in findings will start to reduce. However, as noted by Braun and Clarke, this concept is drawn from the assumptions of quantitative research:

saturation invokes a particular model of qualitative research (experiential, more positivist), where data are collected to provide a complete and truthful picture of the object of study, a theoretical position not all qualitative researchers subscribe to.³³⁴

The epistemological position of this thesis was that the way in which fair enforcement is conceived will always be socially constructed and context bound. It may be desirable to reach a greater level of consensus across the stakeholders involved, but this is beneficial for the purpose of joined-up thinking or collaborative working, rather than to achieve one true version of fair enforcement. This thesis examines a change in the law which was brought about over time, and acknowledges that the future of enforcement will be similarly fluctuating and involve deliberative evolution of ideas.

³³³ *The Sage Handbook of Qualitative Research, 3rd Ed* (Sage Publications Ltd 2005); Virginia Braun and Victoria Clarke, *Successful Qualitative Research: A Practical Guide for Beginners* (Sage Publications Ltd 2013) 38.

³³⁴ Braun and Clarke (n 327) 56.

MEMBER-CHECKING

Some qualitative researchers claim that to validate data it must be approved by participants, for example, by sending interview transcripts for them to read, often known as 'member-checking'.³³⁵ It is thought that offering this additional stage can encourage participation and improve trust between the researcher and participants.³³⁶ I did not incorporate a member-checking stage into the research design for a number of reasons; this would introduce a significant additional burden on participation which was felt to be unsuitable for research with busy people working in public services; this became more acute given the impact of the COVID-19 pandemic on frontline services. In addition, any comments and criticisms I received may have been motivated by things other than producing the most credible research, such as curating a certain perception of the work of the local authority.³³⁷ Member-checking would have also introduced a significant delay in the project with no obvious end to the process.³³⁸ I felt that the fact that participants had the right to withdraw their contributions from the study altogether provided a sufficient safeguard if they had a change of heart about participation, as discussed further below in relation to ethics. Combining this with the verbatim nature of transcription, it was felt that, on balance, member-checking was not necessary.

TRIANGULATION AND MIXED METHODS

The concept of triangulation was influential on the mixed-methods research design of this project. Original ideas of triangulation, developed by Norman Denzin, suggested that the use of two or more methods of data collection to examine the same phenomenon would put the researcher closer to the 'truth' of the research topic.³³⁹ However, I adopted a view of triangulation as conceived by Smith, who saw it as a

³³⁵ Braun and Clarke (n 327) 282-286.

³³⁶ Kate Wicker and Laura Connelly, *The Practice of Elite Interviewing in Politicised Policy Areas* (SAGE Publications, Ltd 2014) <<http://methods.sagepub.com/case/the-practice-of-elite-interviewing-in-politicised-policy-areas>> accessed 24 March 2021, 10.

³³⁷ Ibid.

³³⁸ Braun and Clarke (n 327) 284.

³³⁹ Braun and Clarke (n 327) 286.

method of 'strengthening analytic claims, and of getting a richer or fuller story, rather than a more accurate one'.³⁴⁰ Silverman's justification for this more relativist conception of triangulation is that:

it is only when we put the different pieces of the jigsaw together that we see a broader picture and gain some insight into the complexity of our research. Triangulation becomes a way of capturing the multiple 'voices' or 'truths' that relate to the topic, rather than being understood as a way to access the one right 'result'.³⁴¹

Following this logic, I did not adopt the idea of triangulation as getting closer to a truth, but as a way of seeing a process or system from a number of different angles,³⁴² each of which have different limitations that must be reflected upon, but when combined are richer than when viewed in isolation.

This project used a mixed methods approach, including both data production and data selection from secondary sources. All the sources are similar, in that they are comprised of in-depth discussions of the research phenomenon and were chosen because of the ways in which they demonstrate how language gives shape to certain social realities³⁴³ in the context of debt. The data was naturalistic in all three sources, in that it was not in pre-existing categories at the time of collection, in the way survey responses often are.³⁴⁴ The data collection methods and sources were selected based on their ability to demonstrate practices and thought processes, including areas of contradiction.³⁴⁵ Using a range of methods and sources helped to explain

³⁴⁰ Ibid.

³⁴¹ Ibid.

³⁴² A Cochrane, 'Illusions of Power: Interviewing Local Elites' (1998) 30 *Environment and Planning A: Economy and Space* 2121, 2130.

³⁴³ Braun and Clarke (n 327) 25.

³⁴⁴ Lincoln and Guba (1985) cited in Braun and Clarke (n 327) 33.

³⁴⁵ RW Connell, 'Live Fast and Die Young: The Construction of Masculinity among Young Working-Class Men on the Margin of the Labour Market' (1991) 27 *The Australian and New Zealand Journal of Sociology* 141, 143.

why things were a certain way and the interests which were served by systems in their current form.³⁴⁶

METHODS

There were three stages of data collection from three different sources, with a mix of secondary analysis of existing sources and primary data collection. The three data sources were:

1. Judgments of appeals against imprisonment for debts to local government, with particular emphasis on the case of *Woolcock (No.2)*³⁴⁷;
2. Responses submitted by local authorities to a 2018 Welsh Government public consultation on ‘the removal of the sanction of imprisonment for non-payment of council tax arrears’;
3. Transcripts of semi-structured, in-depth interviews conducted with seven senior members of council tax enforcement staff from five different local authorities in Wales.

ETHICS

Stages one and two of data collection used secondary sources and therefore did not require ethical approval. In preparation for stage three I submitted a detailed application for ethical approval in May 2019 which was approved by the School of Law and Politics Research Ethics Committee in June 2019 (Reference SREC/180619/13). The main ethical implications of interviewing were use of gatekeepers for participant recruitment, informed consent, the right to withdraw, data protection arrangements, risk of harm to participants and researcher safety. A copy of the ethics application with details of how these risks were accounted for and confirmation of ethical approval can be found in Appendix Seven.

³⁴⁶ Braun and Clarke (n 333) 9-10.

³⁴⁷ *R (on the application of Woolcock) v Secretary of State for Communities and Local Government and others* [2018] EWHC 17 (Admin), hereafter ‘Woolcock (No.2)’.

CASE LAW

The data for this stage of the project were case records of appeals submitted by individuals who had been imprisoned for failure to pay council tax or the community charge. This was consistent with the doctrinal underpinnings of the project discussed above. A total of twenty-three cases were identified and accessed through legal databases, including Westlaw and Lexis Library. It is interesting to note that, as a university student, I was in a privileged position to be able to access these case law records which are not available without a paid subscription; this contributes to the general lack of publicly available information about the practice of imprisonment for debt.

The process of identifying relevant cases was an iterative one, starting with the most recent cases of *Woolcock (No.2)* and *Aldous* and using cases cited in their judgments to follow a trail of legal precedent back over several decades. I included cases which related to both council tax and the community charge because the regulations which permitted imprisonment remained the same when council tax replaced the community charge. Therefore, the decisions relating to imprisonment for community charge were seen as part of the same system as for council tax.

Despite the severity of possible outcome, records of the original magistrates' committal hearings were not commonly maintained, meaning that evidence of what occurred in these initial hearings is very limited, based on affidavits where they are available. This poses an unacceptable limitation on oversight of the content of committal hearings and their outcomes and can be seen as part of a wider trend in compromising procedural protections for debtors, discussed further in Chapter Five. Despite this, appeals against committals can serve as rich sources of evidence. The sample of cases analysed was not intended to be representative of all authorities in relation to council tax enforcement, but to provide a sound basis for thematic analysis of the arguments used to justify committal, and a greater understanding of the procedural rules applied when cases of this kind were considered by the magistrates.

PUBLIC CONSULTATION RESPONSES

Public consultations are a common mechanism used by the Welsh Government to collect views on current policy issues. The Welsh Government consulted the public on the continued use of committal for council tax arrears for twelve weeks, between 11 June and 3 September 2018. The title of the consultation was 'Removal of the sanction of imprisonment for the non-payment of council tax'. Two questions were asked:

- Do you agree that the sanction of imprisonment for non-payment of council tax should be removed?
- Do you have any other comments regarding this consultation?

This title, and the questions asked, set the tone of the consultation; its intention was to collect views on abolition of committal, rather than asking more neutral questions, for example, 'what are your views on the sanction of imprisonment for non-payment of council tax?'. The chosen wording may have influenced the number and nature of the responses submitted, for example, discouraging responses from those who supported the use of committal who may have felt that the outcome of the consultation was something of a foregone conclusion. The extent of this is difficult to gauge, but important to reflect on.

The consultation was circulated to 'key stakeholders including local authorities, debt advice organisations and citizens'³⁴⁸. Responses could be submitted by post or email and were accepted in either English or Welsh. After twelve weeks, a total of 188 responses had been received.³⁴⁹ This was a significantly higher response rate than for other consultations on council tax.³⁵⁰ Respondents could identify themselves or

³⁴⁸ ['Explanatory Memorandum to the Council Tax \(Administration and Enforcement\) \(Amendment\) \(Wales\) Regulations 2019' 3.](#)

³⁴⁹ ['Consultation - Summary of Responses - Removal of the Sanction of Imprisonment for the Non-Payment of Council Tax' \(Welsh Government 2018\) WG35286 4.](#)

³⁵⁰ The two other consultations detailed in n 348 received 19 and 69 responses respectively.

request for their submission to be anonymised; 84 respondents to this consultation requested anonymity.³⁵¹

To aid transparency, any member of the public can request copies of the responses submitted to any public consultation which the relevant government are obliged to provide. Copies of the responses to the Welsh Government's public consultation on the use of committal were requested on 31 January 2019, by email to the address provided in the details of the consultation. A database containing all the responses was provided on 1 March 2019 by a member of the Local Government Strategic Finance Division of the Welsh Government. As the consultation offered the option to submit a response anonymously, the database of responses provided did not name all the respondents.

The database contained the views of a wide range of respondents, including members of the public, charities, local authorities, and religious leaders. I read and reflected on all the responses. Because the focus of this research was on questions of how and why committal was used, I decided to narrow my analysis to responses submitted by local authorities as the respondents with direct responsibility for, and influence upon, enforcement of council tax. Responses submitted by members of the public were less relevant to understanding the decisions which led to committal in Wales, although they could be indicative of views of the wider electorate. The scope of this project was limited to the responses of local authorities, but the rest of the data represents fertile ground for future research on the attitudes of the public to debt issues.

Responses to a public consultation are most closely related to surveys in terms of data collection methods. The public consultation was seen as a good method to obtain timely data on a specific topic of direct relevance to the research questions. It acted as a snapshot of views at a time when committal was still being used in some, but not all, authorities. As reflected on in Chapter 2, research undertaken by the

³⁵¹ Summary of Responses (n 349) 4.

Welsh Government has an increased likelihood of high response because it is high profile and creates an obligation to participate, particularly for local authorities. Because consultations ask the same question of all participants, responses can be standardised, which aids comparison and analysis of themes across the data.³⁵² This being said, there are several factors which will influence the quality of the data which are out of the researcher's control; responses may be more or less detailed depending on the respondent's level of motivation, interest, and time available to prepare their response.³⁵³ As noted above, the wording of the consultation questions can influence the nature of responses.

Analysis of the content of local authority responses to the public consultation can be found in Chapter Six, Part Two.

INTERVIEWS

In this final stage of data collection, I planned to conduct semi-structured, in-depth interviews with representatives of local authorities in Wales who had responsibility for enforcement of council tax arrears and decisions around committal. This stage of data collection was the most socio-legal in nature, in that it used interviewing, a prominent sociological research method,³⁵⁴ to explore the legal process of council tax enforcement retrospectively, one year on from the removal of committal in Wales. This method was also consistent with a social constructionist approach; as noted by Fadyl and Nicholls, 'research interviews have become very widely used to help understand how people construct meaning around their lived experiences.'³⁵⁵

Although I did not specify a specific role or individual at each local authority that I wished to interview, it was expected that responses to my enquiries were most likely to come from senior managers who would be most accustomed to representing their

³⁵² Braun and Clarke (n 327) 137.

³⁵³ *ibid* 141.

³⁵⁴ Benney and Hughes argued in 1956 that 'sociology has become the science of the interview': Ana Manzano, 'The Craft of Interviewing in Realist Evaluation' (2016) 22 *Evaluation*, 342.

³⁵⁵

authority in research or other interviews. At all times these individuals were seen as reflective of the broader system and structures of council tax enforcement,³⁵⁶ and it was acknowledged that their prerogative in being interviewed would be to present a positive image of the work of their organisation.

The way in which the research topic is defined can have an impact on recruitment and subsequent findings.³⁵⁷ Issues which participants feel able to talk about and deem important to themselves or society may encourage greater participation.³⁵⁸ In preparing participant documentation, the research was framed as an opportunity to express views on the recent change to the law. In doing this, I hoped that the interview would be perceived as serving a purpose for both the interviewee and the interviewer,³⁵⁹ in that they would have the opportunity to contribute to independent academic research on a legal change which impacted their professional work, with the potential for this to inform future reform discussions. This introduced an element of neutrality to my role as an interviewer, but also acted as a helpful starting point for discussions, as opposed to framing the project as a more general study into council tax enforcement. Copies of all participant documentation can be found in Appendix Four.

The first two stages of data collection informed the development of an interview question framework. This was organised around four main themes: introductory questions about the specific authority and the individual's experience, questions on previous use of committal, perceptions of the public consultation and their views on the impact of the removal of committal. Questions developed from general to specific³⁶⁰ and were open-ended in an effort to encourage detailed responses.³⁶¹ As the interviews were intended to be semi-structured this interview framework was developed as a general guide but not intended to be used systematically. Wording

³⁵⁶ Cochrane (n 342) 2131.

³⁵⁷ Guro Korsnes Kristensen and Malin Noem Ravn, 'The Voices Heard and the Voices Silenced: Recruitment Processes in Qualitative Interview Studies' (2015) 15 *Qualitative Research* 722, 727.

³⁵⁸ *ibid* 729.

³⁵⁹ *ibid* 727.

³⁶⁰ Braun and Clarke (n 327) 84.

³⁶¹ *ibid* 79.

and question order were variable across interviews, and responsive to the participant's developing account.³⁶² A copy of the interview framework is available in Appendix Six.

Prior to arranging interviews, I conducted desk-based research on each of the twenty-two local authorities of Wales to gain a better understanding of their specific contexts. This included considering any data available on their council tax enforcement history as well as their responses to the public consultation, if they had submitted one. With this background knowledge I was able to tailor my interview questions to their particular experience. For example, I referred to views they had expressed in their consultation response, if they had submitted one, to introduce topics or as counterfactuals if I sensed inconsistency or contradiction in their answers.

As part of the application for ethical approval to conduct interviews, I prepared participant documents including a consent form, information sheet and an initial contact email/letter. These documents were professionally translated into Welsh to comply with Cardiff University's Welsh Language Standards³⁶³ and the Welsh Language (Wales) Measure 2011,³⁶⁴ and to enable participants to consider the information provided about the research in their preferred language. This is also consistent with the ESRC's Ethics Case Study on research in multi-lingual environments which stresses the importance of cultural sensitivity in research design and delivery.³⁶⁵ Copies of these documents can be found in Appendix Four.

After finalising my participant documentation, I started planning to contact Revenues

³⁶² *ibid* 78.

³⁶³ 'Cardiff University Welsh Language Standards' <<https://www.cardiff.ac.uk/public-information/corporate-information/welsh-language-standards>> accessed 7 July 2021.

³⁶⁴ Mesur y Gymraeg (Cymru) 2011 (nawm 1)

³⁶⁵ Paterson, 'Case Study: Working in a Multi-Lingual Setting - Economic and Social Research Council' (Economic and Social Research Council Undated) <<https://esrc.ukri.org/funding/guidance-for-applicants/research-ethics/ethics-case-studies/case-study-working-in-a-multi-lingual-setting/>> accessed 7 July 2021.

Managers in each of the twenty-two local authorities of Wales. The contact details for these individuals are not publicly available, which meant that, without a gatekeeper, I would have to use generic enquiries email addresses for each local authority.³⁶⁶ The concern with this approach was that my communication would be lost in the high volume of correspondence each council receives, and this would reduce response rates or speed. As there had been a recent and significant change to the law, it was also likely that my target participants would be receiving increased levels of requests from researchers or journalists,³⁶⁷ so a gatekeeper with an established relationship with the participants improved the chances of securing an interview. This highlights the problems of access to legal actors when conducting socio-legal research, and that often there is a need to make compromises to gain access; such compromises are reflected on below in relation to interviewing managers rather than workers directly engaged in enforcement work.

I have attended networking events throughout this project to establish connections with key stakeholders and policymakers in relation to council tax in Wales. As a result, I was introduced to the Welfare Reform Officer of the Welsh Local Government Association (WLGA), a cross-party membership organisation which advocates for the interests of local government in Wales and represents all twenty-two local authorities.³⁶⁸ After explaining the aims of my project, this individual acted as a 'gatekeeper'³⁶⁹ or 'mediator'³⁷⁰ in offering to pass on my invitation to be involved in interviews through their established communication channels. They emailed all Revenues Managers in Wales in September 2019, providing copies of the participant information documents and consent forms. The approach to sampling was therefore convenience sampling, with an element of snowball sampling,³⁷¹ as I invited willing

³⁶⁶ Wicker and Connelly (n 336) 6.

³⁶⁷ *ibid.*

³⁶⁸ <https://www.wlga.wales/about-us>

³⁶⁹ CL Wanat, 'Getting Past the Gatekeepers: Differences between Access and Cooperation in Public School Research' (2008) 20 *Field Methods* 191.

³⁷⁰ Kristensen and Ravn prefer the term mediator in situations where the individual is not considered part of the population of interest but facilitates access to the population (n 357) 725.

³⁷¹ I adopt the definition of snowball sampling used by Kristensen and Ravn: 'In research on less accessible populations...snowball sampling starts with a set of people ('seeds') from the hard-to-reach population who eventually help the researcher contact more respondents.' (n 357) 724. Wicker and Connelly (n 336) 10.

participants to suggest colleagues who might also be interested in being interviewed. Although convenience sampling is often criticised as the least rigorous sampling method,³⁷² in this project it was suitable because I did not intend to make generalisable claims about all local authorities, meaning there would have been no advantage to adopting randomised or stratified sampling. In addition, the individuals I sought to interview could be considered a 'hard to reach' population because of their professional schedules and lack of incentives to be involved in social research. For these reasons convenience sampling was the only available option but did not reduce the quality of the findings because of their qualitative focus.

Despite the use of a gatekeeper from the WLGA, only five of the twenty-two local authorities expressed an interest in participating in interviews. A follow-up email was sent in January 2020 to encourage more participation in the project but did not generate any new responses. It is difficult to understand the exact reasons for this lack of willingness to participate, as most authorities did not reply to the invitation. One individual declined to participate because they did not want to be identified in research; this was despite the fact that the data protection information and consent forms made it clear that no participants would be named, but this issue could not be resolved. The risk of low take-up was considered during the research design phase but not considered an insurmountable challenge because of the emphasis on depth over breadth in the data collection approach.³⁷³ One argument for a qualitative approach is that you can learn one hundred things from ten people as much as you can learn ten things from one hundred people. Indeed, a number of ground-breaking studies in sociology have included fewer than ten participants.³⁷⁴ Although it would have been beneficial to have spoken to representatives of all of the local authorities of Wales, the depth interview method did not rely on full participation to achieve

³⁷² Margarete Sandelowski, 'Sample Size in Qualitative Research' (1995) 18 *Research in Nursing & Health* 179, cited in Braun and Clarke (n 327) 57.

³⁷³ Carolyn Lunsford Mears, *Interviewing for Education and Social Science Research* (Palgrave Macmillan New York) cited in Xu Liu, 'Interviewing Elites: Methodological Issues Confronting a Novice' (2018) 17 *International Journal of Qualitative Methods* 1, 3.

³⁷⁴ 8 participants: Raewyn Connell, 'Live Fast and Die Young: The Construction of Masculinity among Young Working-Class Men on the Margin of the Labour Market' (1991) 27 *The Australian and New Zealand Journal of Sociology* 141. 9 participants: James W Messerschmidt, *Nine Lives: Adolescent Masculinities, the Body, and Violence*. (Westview Press 2000).

quality research, as discussed above in relation to measures of quality in qualitative research. The important aspect was giving all local authorities an opportunity to be involved and express their views; the fact that they were not all interested or able to participate was secondary. This lower level of engagement from local authorities, when contrasted with studies such as Greenall and Prosser which achieved a full response rate, further underlines the access advantages of governmental research in comparison with academic research, and a more general barrier to research oversight of fundamental practices of local government. These variations in researcher access have negative consequences for knowledge production.

Because of the relatively low response rate, it was not practicable to conduct pilot interviews. However, the interviewing style did develop over time, and I reflected on any issues after each session. Interviews took place between 6-25th February 2020 with seven members of staff from five local authorities. This included a mix of authorities from across North and South Wales, urban and rural areas.

Revenues Managers were included in all interviews, and less senior management staff in two of the five. Interviews lasted between 1.5-2 hours each. I attended the offices of each local authority for the interviews, rather than arranging a neutral venue or using remote methods such as the telephone or video-conferencing software. Comparative studies on the use of in-person versus remote interview methods have found that in-person interviews tend to be more conversational and produce more detailed transcripts than remote methods.³⁷⁵ They also allow the interviewer to observe visual and emotional cues.³⁷⁶ This was partly for the convenience of the participants, given their busy schedules, but was also beneficial in terms of getting a sense of the setup of each local authority. For example, during several interviews, participants discussed the arrangement of their staff and were able to show me the physical division of the office space. Each of the offices were different; one was situated in the centre of the town, close to shops, the court and

³⁷⁵ David R Johnson, Christopher P Scheitle and Elaine Howard Ecklund, 'Beyond the In-Person Interview? How Interview Quality Varies Across In-Person, Telephone, and Skype Interviews' (2019) *Social Science Computer Review*, 1-17, 2.

³⁷⁶ Johnson, Scheitle and Ecklund (n 377) 3.

other amenities. The entrance to the office was used for welfare advice and was busy with appointments during my visit. By contrast, another had a large, purpose-built office outside the town centre. Most of the offices were in close proximity to courts or civic centres.

Within the timescale of the project, a further round of recruitment could have been attempted to encourage more participation from other local authorities. However, shortly after completion of the five interviews, Wales and the rest of the UK were severely impacted by the COVID-19 pandemic. Given the pressure placed on local authorities and all public services during this unprecedented national crisis, it was deemed inappropriate to make further attempts to recruit participants. The widespread use of video-conferencing software for research necessitated by the pandemic also provides an important point of reflection; if this study were to be repeated in future an increased response rate could be achievable through virtual interviewing, given its convenience and the broad acceptance as a research method as a result of necessity during the COVID-19 pandemic.

INTERVIEWING ELITES

*'But is it enough simply to buy a tape recorder, invest in a suit and tie or a smart dress, write some letters, prepare a semistructured [sic] questionnaire, and seek out some research subjects?'*³⁷⁷

In designing and preparing for interviews I categorised the target participants as 'elites'. There is no fixed definition of an elite in social research, but I adopted Wicker and Connelly's concept of 'those that command a position of authority or privilege, often having some influence upon decision-making.'³⁷⁸ This status is likely to have influenced the accessibility of my target participants. Such inaccessibility means that

³⁷⁷ Cochrane (n 342) 2123.

³⁷⁸ Wicker and Connelly (n 336) 3.

elites often remain unstudied 'because of their ability to use their positions and authority to protect themselves from intrusion.'³⁷⁹

In contrast to interviews with vulnerable participants, such as children, where the researcher must take steps to safeguard against harmful power imbalances, in elite interviewing the tables are turned and the target participant is in a powerful position. As Cochrane highlights, without access there can be no research, and even after arranging or completing an interview, 'the fear of direct veto or withdrawal remains.'³⁸⁰ This inevitably informs the interview process; in this context it introduced a sense of an obligation to appear sympathetic to the position of the interviewee³⁸¹ which I had to manage in order to maintain a neutral position.

Unlike interviewing lay participants,³⁸² this process also created an expectation to appear knowledgeable on the subject. Braun and Clarke warn that 'doing expertise' and asserting authority on the research topic is one of the quickest ways to close down an interview.³⁸³ However, for local government elites, I felt an expectation to demonstrate my prior knowledge and preparation for the discussion. This served two purposes: first, to justify my request to take up their time as worthwhile, but secondly, to make it clear that they would not need to explain to me the complex processes or history of council tax enforcement, which would have taken up a large proportion of our 1–2-hour interview appointment. Wicker and Connelly see the performance of 'knowledgeability' as beneficial in encouraging brevity in foundational areas or topics outside of the specific project scope.³⁸⁴ Such knowledgeability seemed instinctively productive from the outset of interviews, but forced me to develop a character; as Cochrane found, 'this closeness to such expertise was also part of our own self-image (we were the people who understood the people who understood the system

³⁷⁹ Albert Hunter, 'Local Knowledge and Local Power: Notes on the Ethnography of Local Community Elites' 22 *Journal of Contemporary Ethnography* 36 cited in Xu Liu, 'Interviewing Elites: Methodological Issues Confronting a Novice' (2018) 17 *International Journal of Qualitative Methods*, 1-2.

³⁸⁰ Cochrane (n 342) 2124.

³⁸¹ Cochrane (n 342) 2124.

³⁸² Kristensen and Ravn (n 357), 726.

³⁸³ Braun and Clarke (n 327) 96.

³⁸⁴ Wicker and Connelly (n 336) 9.

of local government finance).³⁸⁵ I would demonstrate this preparedness and prior knowledge by taking the opportunity early in our discussion to identify key pieces of legislation, for example the Taking Control of Goods Regulations, when I sensed that the participant was alluding to the details of the legal framework. In other contexts, this input from the interviewer may have been seen as undesirable, but in this context, it was necessary to use the time efficiently and to access the fundamental assumptions and decision-making processes in which the interviewee was involved.

The need for performance of prior knowledge relates to the gender of the researcher; I did not experience any direct impact of being a female researcher, but it is an important aspect of researcher positionality to reflect on. Schoenberger suggests that female researchers may find it easier to navigate access to participants because of a perception that they are less threatening but may also be patronised with regard to their understanding of complex subjects.³⁸⁶ My position as a female researcher may have had an implicit impact on the way in which my participants discussed debt and its causes. These influences are difficult to identify, but in any event are not seen as something which should be cleansed from the data. My status as a PhD researcher, which was made clear throughout recruitment and fieldwork, and the associated prestige of my institution may also have positively or negatively influenced the responses of the participants.³⁸⁷ A key tenet of qualitative research is that it does not seek to remove the researcher from the data, seeing their specific influence as a strength rather than a weakness.

Although interviewing was deemed a productive and insightful method of developing answers to the research questions posed at the start of this chapter, it is important to reflect on its limitations and the mitigating strategies I implemented to achieve the best quality data. Qualitative researchers often disagree over the utility of interviewing because of what is termed the 'attitudinal fallacy'.³⁸⁸ This is the idea that

³⁸⁵ Cochrane (n 342) 2124-2125.

³⁸⁶ Schoenberger (1992) quoted in Cochrane (n 342) 2125.

³⁸⁷ Wicker and Connelly (n 336) 3.

³⁸⁸ Colin Jerolmack and Shamus Khan, 'Talk Is Cheap: Ethnography and the Attitudinal Fallacy' (2014) 43 *Sociological Methods & Research* 178.

people are not necessarily trustworthy or reliable sources of evidence concerning their own actions or practices, because what they say and what they do are often distinct.³⁸⁹ This is particularly problematic for research projects such as this one, which focus on the motivations of past actions,³⁹⁰ and where the tendency to believe interviewees may be more potent as a result of their elite status.³⁹¹

There are a number of ways in which interviewees may provide an unreliable account, both conscious and unconscious. Deception was a concern in this project on the basis that local authorities had a vested interest in being perceived by those who read the research as well-intentioned, fair organisations.³⁹² This was particularly relevant because of the contested and controversial nature of imprisonment in this context; I was asking participants to reflect on times they had decided to pursue an enforcement method which had recently been resolutely rejected by the public in response to a government consultation. This potential for unreliability demonstrates the suitability of a social constructionist epistemology, which situates the meanings created by individuals within their local context, in this case within an expectation of professional damage limitation.

Many of the participants, by virtue of their senior position, had worked in council tax enforcement for several decades. The questions did not define a specific time frame of interest and as a result, discussions could often relate to examples from a long time ago. This introduced a risk of recall error, where participants may add, omit, or distort information because of the passage of time since the event they are describing.³⁹³

Linked to this recall error is a bias towards reasonableness.³⁹⁴ This was particularly relevant for this project, where we discussed the idea of a severe sanction with

³⁸⁹ Mario L Small and Jenna M Cook, 'Using Interviews to Understand Why: Challenges and Strategies in the Study of Motivated Action' [2021] *Sociological Methods & Research*, 2.

³⁹⁰ *ibid* 3.

³⁹¹ Cochrane (n 342) 2129.

³⁹² Small and Cook (n 391) 11.

³⁹³ *ibid* 12.

³⁹⁴ *ibid* 13.

reference to concepts like fairness and proportionality. For this reason, and for reputational protection, my participants may have felt a pressure to represent themselves as reasonable and provide explanations that appeal to common sense, albeit not necessarily reflecting the full reality of the events they described. Many of the questions asked for an explanation of why decisions were taken, or why certain methods were chosen; this creates an implicit suggestion that the interviewer is looking for a 'good answer', one which expresses 'motives conventionally accepted as adequate'.³⁹⁵ In relation to this limitation, Becker provides the example of an employee who is asked why they are late for work.³⁹⁶ They are more likely to provide an answer that suggests the fault lies elsewhere, like a problem with public transport, than to be honest about oversleeping.³⁹⁷

In addition to the desire to appear reasonable, interviewees may also overstate the extent to which actions they took in the past were purely intentional, rather than reactive to circumstances.³⁹⁸ Linked to this is the tendency to explain decisions as having a single motive, where multiple factors and causes actually led to that decision.³⁹⁹ This may be linked to the status of local authorities as public bodies funded by taxation, and an expectation therefore to act with volition and clear justification in all circumstances, even where this is not practicable.

The strategies I used to combat these issues all relate back to the idea of triangulation;⁴⁰⁰ from the outset, data collection was always intended to be multi-staged and extensive. Because some participants had previously contributed to their local authority's response to the public consultation on committal, I was able to use this as a point of challenge if they presented a different opinion during our interview, analogous to using multi-stage interviews as a form of triangulation.⁴⁰¹ As rapport

³⁹⁵ Howard S Becker, *Tricks of the Trade: How to Think about Your Research While Doing It* (University of Chicago Press 2008) cited in Small and Cook (n 391) 13.

³⁹⁶ Ibid.

³⁹⁷ Ibid.

³⁹⁸ Small and Cook (n 391) 14.

³⁹⁹ ibid 15.

⁴⁰⁰ ibid 16.

⁴⁰¹ ibid 17-18, 22.

developed during the interview I felt able to speak more freely and ask more challenging questions, revisiting any points of contradiction or claims that were thinly warranted.⁴⁰² The fact that participants may be inclined to deceive, appear unrealistically reasonable or overstate agency and motives is an interesting phenomenon in itself in this context, where individuals reflect on a practice in which they used to be involved but which has now been deemed unsuitable. As the aim of the research was not to access some higher truth about the reasons why committal was used, these potential areas of contradiction form a valid part of the findings and help us to conclude that there was no one justification for the use of committal. The purpose of the interview was not to collect evidence to establish that $A+B=C$, but to highlight the often-messy work of public service and the difficulties of navigating the tension between debtor and creditor.

RECORDING AND TRANSCRIBING

Every interview was audio-recorded using a Dictaphone. I made the decision to use a Dictaphone, rather than make notes during the interview, as I anticipated that the topics to be discussed would be complex and my recall of what was discussed would therefore be limited. As the focus of qualitative research is on language use and individual perspectives it was important to have a data collection technique which allowed my analysis to be detail oriented.⁴⁰³ This decision also allowed me to pay full attention to the participant's responses during the interview, as I was not distracted by making notes.

Over a period of two weeks immediately following the interviews, I transcribed the recordings of the five interview sessions, producing approximately 65,000 words. I opted to transcribe the interview recordings myself, rather than use the services of a transcription professional, as I saw this as an important step in familiarising myself with the content, and as the very first step in the process of analysis. Transcripts were verbatim but did not include paralinguistic features such as timed pauses, as is

⁴⁰² *ibid* 18.

⁴⁰³ Braun and Clarke (n 327) 92.

common in Jeffersonian transcription,⁴⁰⁴ because the focus of analysis was on the content of the interview as a representation of the practices of the local authority rather than the individual speech style of the participant. This highlights the influence of the researcher throughout the process of data collection and analysis, even in transcription which could be perceived as straightforward; as Braun and Clarke argue, ‘the transcript is the product of an interaction between the recording and the transcriber, who listens to the recording, and makes choices about what to preserve, and how to represent what they hear.’⁴⁰⁵

ANALYSIS

The final stage of the research design was analysis; before collecting any data, I considered how I intended to analyse it. I used the same type of analysis for all three data sources. Chapters Five to Seven present the findings from reflexive thematic analysis of the case law, public consultation responses and interview transcripts. Chapter Eight draws together themes developed across the three data sources into a coherent narrative in response to the research questions.

Thematic analysis, the process of ‘identifying themes and patterns of meaning across data’⁴⁰⁶ is a very commonly used method of analysis in qualitative research.⁴⁰⁷ The term is originally attributed to Gerald Holton, a physicist and historian of science.⁴⁰⁸ Similarly to doctrinal legal research, it suffers from an identity crisis as researchers often fail to particularise what thematic analysis entails; there is a tendency for it to be used as a default analysis method for interview or survey data, without a full engagement with its processes and potential outputs, leading to a perception that ‘anything goes’.⁴⁰⁹ This is perhaps because of its broad applicability to all kinds of

⁴⁰⁴ *ibid* 162.

⁴⁰⁵ *Ibid*.

⁴⁰⁶ Braun and Clarke (n 333) 178.

⁴⁰⁷ Virginia Braun and Victoria Clarke, ‘Using Thematic Analysis in Psychology’ (2006) 3 *Qualitative Research in Psychology* 77.

⁴⁰⁸ Braun and Clarke (n 327) 178.

⁴⁰⁹ Braun and Clarke (n 409) 78.

research question, data source, theoretical perspective, or size of dataset,⁴¹⁰ meaning the specific practicalities of thematic analysis have been diluted by use across multiple disciplines.

I adopted a reflexive thematic analysis approach, which places emphasis on the individual researcher's process and assumptions, rejecting the idea that thematic analysis requires a team of coders to achieve valid analysis.⁴¹¹ Similar analysis techniques would include, but are not limited to, Qualitative Content Analysis (QCA) and Interpretative Phenomenological Analysis (IPA). Reflexive thematic analysis was chosen because QCA is associated with positivist ideas of accuracy and reliability (discussed further below) and because IPA tends to focus on individual personal experience and coding by individual case rather than across cases.⁴¹²

For the three different data sources I adopted the same process of analysis. The case law and consultation responses were readily available in textual format, whereas the interviews I conducted required transcription, which can be seen as the first stage of analysis, allowing familiarisation with the content of interviews and initial patterns to develop. Following first transcription, I listened to the recordings and checked the transcripts for accuracy. With accurate transcripts in place, I then completed two rounds of close reading of the transcripts, making handwritten notes of any initial ideas. At this stage I knew the transcripts well and could start to develop characteristics and points of contrast between each interview.

I uploaded all three data sources to the qualitative data analysis software NVivo. For each data source I developed a separate 'workbook' to keep the analyses distinct. This separation was an attempt to mitigate influence from one data source to

⁴¹⁰ Braun and Clarke (n 327) 178.

⁴¹¹ Virginia Braun and Victoria Clarke, 'One Size Fits All? What Counts as Quality Practice in (Reflexive) Thematic Analysis?' [2020] *Qualitative Research in Psychology* 6

⁴¹² Virginia Braun and Victoria Clarke, 'Can I Use TA? Should I Use TA? Should I Not Use TA? Comparing Reflexive Thematic Analysis and Other Pattern-Based Qualitative Analytic Approaches' (2021) 21 *Counselling and Psychotherapy Research* 41. An interesting example of phenomenological analysis on debt collection in the US is: Ronald Paul Hill, 'Bill Collectors and Consumers: A Troublesome Exchange Relationship' (1994) 13 *Journal of Public Policy & Marketing* 20.

another, although the extent to which this is possible in a solo project is limited. My intention was to conduct three separate analyses of the material, bringing together my findings across the sources at the final stage. The same approach was taken to analyse each source, but I will now provide an overview of the process adopted to analyse the interview transcripts, as this was the most significant stage of analysis in terms of the quantity of data.

Each transcript was labelled by local authority. Working through one interview transcript at a time, I conducted a complete coding of all responses to my interview questions. Each idea was attributed to a 'node', a collection of references to a specific theme, case or relationship.⁴¹³ Because I did not approach analysis with a thematic codebook prepared, I did not opt to apply selective coding, where the researcher identifies a corpus of specific examples of a theme across the data, excluding text which does not relate to that theme from coding.⁴¹⁴ I coded every line of each transcript, frequently coding the same sentence or paragraph to multiple nodes.⁴¹⁵ For example, some participants would discuss problems with the current system of council tax by illustrating how another method would be preferable; this would be coded as 'problems with existing system' as well as 'suggestions for reform'.

Once every line of the dataset had been coded, I spent time considering the extensive list of nodes I had developed. I interpreted this ability to code every line of the transcripts as a positive indicator of the quality of my interview framework and questioning skills, as the conversations remained on-topic and relevant throughout the extended discussions. Some of these nodes were overlapping or could be grouped with other nodes into an overarching theme. This was an iterative and recursive process,⁴¹⁶ which involved some additional coding or recoding of the transcripts to make sure that the most relevant nodes had been applied to each statement. At this stage, using software such as NVivo was invaluable; if I were to

⁴¹³ 'NVivo 11 for Windows Help - About Nodes' <https://help-nv11.qsrinternational.com/desktop/concepts/about_nodes.htm> accessed 25 August 2022.

⁴¹⁴ Braun and Clarke (n 327) 206.

⁴¹⁵ Braun and Clarke (n 409) 89.

⁴¹⁶ *ibid* 86.

manually code the transcripts, using coloured pens or highlighters, it would be much more difficult to recode or amend node labels. Equally, once I was happy with the application of nodes and the higher-level themes I had developed, I was able to draw together all examples of a specific theme at the click of a button; this would be very time-consuming to do with manual coding, with much more capacity for mistakes or disorganisation.⁴¹⁷

Because the research questions for this project focused on how imprisonment was used and why it was removed, the aim of analysis was to cast light on the processes and decisions which led to imprisonment, approaching the interview transcripts critically to try to identify underlying interpretations and assumptions which were not explicitly articulated.⁴¹⁸ In this way, the interview transcripts were deconstructed to draw out latent meanings,⁴¹⁹ rather than treating the responses as purely descriptive accounts. The process was predominantly inductive,⁴²⁰ maintain a strong connection to the data throughout. As will be discussed in the next chapter, the driving concepts for analysis were the punitive civil sanction and the street-level bureaucrat.

A dataset of circa 65,000 words has the potential to produce a large volume of relevant nodes and themes, meaning judgement must be exercised to select which codes to focus on. In making this decision, the priority was not on quantifying how many times something was mentioned but rather on highlighting those ideas which were most meaningful in response to the overarching research questions.⁴²¹ As I did not interview representatives from every local authority, I was not aiming to make generalisable statements about all local authorities in Wales, meaning that some themes may only have been identified once but were still considered important. This is at odds with some approaches to thematic analysis, such as Fugard and Potts (2015), who advocate for minimum sample sizes and numerical thresholds for theme prevalence. Braun and Clarke are critical of this approach, which begs the question:

⁴¹⁷ Braun and Clarke (n 327) 223.

⁴¹⁸ *ibid* 178.

⁴¹⁹ *ibid* 25, 207.

⁴²⁰ Braun and Clarke (n 409) 83-4.

⁴²¹ Braun and Clarke (n 327) 230; Braun and Clarke (n 409) 82.

‘How far along that beach will you need to walk before you find all six types of diamonds randomly scattered there?’

It is common for researchers who utilise thematic analysis to state that their themes ‘emerged’ from the data they analysed. This is problematic because it characterises the process of thematic analysis as passive and removes the influence of the researcher, which in qualitative research is celebrated.⁴²² The idea that themes emerge is grounded in positivist ideas that research should be replicable, and that for a thematic analysis to be valid, you should be able to substitute another researcher who would identify the same themes from the data. This can be best seen through the concept of ‘inter-coder reliability’, where researchers use a team of analysts to code the same data source, and then compare their results, often applying a statistical measure to the level of variation between codes applied.⁴²³ Rejecting this practice, I adopted the approach that thematic analysis is ‘more akin to the process of sculpture...than an archaeologist digging to find hidden treasures’.⁴²⁴ My analysis was interpretive, informed and enhanced by my experience of studying my research topic for a number of years, and therefore could never be completely neutral; a different researcher may have placed greater emphasis on other themes or ideas, but this does not invalidate my findings, as the objective was crafting a coherent and plausible account which aids our understanding of the research phenomenon, rather than something universal or replicable.⁴²⁵

The final stage of analysis was to write up a coherent account of the themes, drawing together underlying assumptions and drawing conclusions about how the themes answer the research questions. At this stage themes were again revisited and

⁴²² Braun and Clarke (n 327) 225.

⁴²³ Braun and Clarke, ‘One Size Fits All?’ (n 6) 7-8; Virginia Braun and Victoria Clarke, ‘Can I Use TA? Should I Use TA? Should I Not Use TA? Comparing Reflexive Thematic Analysis and Other Pattern-Based Qualitative Analytic Approaches’ (2021) 21 *Counselling and Psychotherapy Research* 40.

⁴²⁴ Braun and Clarke (n 327) 225.

⁴²⁵ Virginia Braun and Victoria Clarke, ‘(Mis)Conceptualising Themes, Thematic Analysis, and Other Problems with Fugard and Potts’ (2015) *Sample-Size Tool for Thematic Analysis* (2016) 19 *International Journal of Social Research Methodology* 740.

refined, as the process of writing is an effective way to test the analysis and the organisation of ideas.

In this chapter, the myriad assumptions and decisions which informed the research design of this project have been set out, with reflections on the limitations of this specific approach and opportunities for future research. In the next chapter, the two concepts which guided the analysis will be described and critiqued.

CHAPTER FOUR - CONCEPTUAL FRAMEWORK

Building on the research design and methodology set out in the last chapter, in this chapter I will define the pair of concepts which have influenced the analysis of the three empirical sources. These concepts informed this research from the outset but presented particularly fruitful starting points for drawing together the empirical findings. They are both consistent with a social constructionist approach (discussed in Chapter Three), because they act as lenses through which to see the ways in which legal systems are defined if we look past the binary of civil and criminal law, and demonstrate the ways in which local authority enforcement staff construct meaning and exercise discretion in response to the pressures and limitations of their work environments. In the following sections I will define the ideas of the 'punitive civil sanction' and the 'street-level bureaucrat', giving an overview of their central tenets, main critiques, and particular relevance to this research. My use of these concepts, it is submitted, is not intended to be slavish or dogmatic, but should 'carry the maximum explanatory power with the minimum technical baggage', as advocated by Newman and Robins.⁴²⁶

IMPRISONMENT FOR COUNCIL TAX ARREARS AS A PUNITIVE CIVIL SANCTION

One factor which has a significant influence on the enforcement of debts is how the available legal sanctions are defined, and where they fall in the established binary of criminal and civil law. In the case of imprisonment for non-payment of council tax arrears, I will argue that this sanction of last resort defied the supposed binary of criminal and civil law, taking the status of a hybrid sanction which is civil but punitive, with the consequence of eroding fundamental procedural rights of the debtors who were subject to committal proceedings. In support of this argument, I will use Mann's concept of the 'punitive civil sanction' as a framework for analysing some of the fundamental features of imprisonment for council tax arrears, alongside other legal

⁴²⁶ Newman and Robins (n 248) 451.

research⁴²⁷ which has problematised the civil/criminal binary. Where many, including Mann, have identified areas of law where hybridisation can be fruitful, I will argue that imprisonment for council tax arrears was a 'harmful chimera'.⁴²⁸ In this section, as a way of introducing the conceptual framework of the punitive civil sanction, I will outline the features of imprisonment for council tax arrears which are, prima facie, inconsistent with the civil and criminal law paradigms; in Chapter Five I will build upon this to analyse aspects of this framework which have been the basis of legal challenge.

THE EXTENT OF THE DIVIDE

The entrenched nature of the division of legal matters was proclaimed in 1776 by Lord Mansfield: 'there is no distinction better known, than the distinction between civil and criminal law; or between criminal prosecutions and civil actions'.⁴²⁹ In line with this proclamation, civil and criminal law are treated differently by the legislature and the judiciary, and by legal academics in research publications and textbooks for legal education. They influence decisions around specialisation of legal practitioners and crucially, have separate procedural rules for litigation.⁴³⁰ Both the parties involved and the issues to be considered are labelled differently depending on which tradition they fall into. The distinction can also be seen in the European Convention on Human Rights,⁴³¹ which requires a fair and public hearing by an independent and impartial tribunal in the determination of both a person's civil rights and obligations and of any criminal charge against him.⁴³²

⁴²⁷ Jennifer Hendry and Colin King, 'Expediency, Legitimacy, and the Rule of Law: A Systems Perspective on Civil/Criminal Procedural Hybrids' (2017) 11 *Criminal Law and Philosophy* 733. Robin M White, "'Civil Penalties": Oxymoron, Chimera and Stealth Sanction' (2010) 126 *Law Quarterly Review* 593. Colin King, 'Using Civil Processes in Pursuit of Criminal Law Objectives: A Case Study of Non-Conviction-Based Asset Forfeiture' (2012) 16 *The International Journal of Evidence & Proof* 337.

⁴²⁸ White (n 427) 616.

⁴²⁹ Kenneth Mann, 'Punitive Civil Sanctions: The Middleground between Criminal and Civil Law' (1992) 101 *Yale Law Journal* 1795, 1803-4 citing *Atcheson v Everitt*, also cited in Colin King (2012).

⁴³⁰ Civil litigation must comply with the Civil Procedure Rules:

<https://www.justice.gov.uk/courts/procedure-rules/civil>. Criminal hearings must be conducted in line with the Criminal Procedure Rules: <https://www.gov.uk/guidance/rules-and-practice-directions-2020>.

⁴³¹ White (n 427) 599.

⁴³² Article 6(1) European Convention on Human Rights

For Mann, there are five defining characteristics to each paradigm, presented below.

| | CRIMINAL PARADIGM | CIVIL PARADIGM |
|----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| MOVING PARTY | State | Private Entity |
| WRONG DEFINED | Subjective Liability; Violation of Public Norms | Objective Liability; Actual Injury to Private Interests |
| PROCEDURE | <ol style="list-style-type: none"> 1. High Leverage to Obtain Information 2. Restrictive Admissibility of Evidence 3. High Burden of Proof | <ol style="list-style-type: none"> 1. Low Leverage to Obtain Information 2. Inclusive Admissibility of Evidence 3. Low Burden of Proof |
| REMEDY | Imprisonment; Stigma | Money Payment; Injunction |
| PURPOSE | Punishment | Restitution; Compensation |

Source: Mann p. 1813

In applying each of these characteristics to the use of imprisonment for council tax arrears, I will highlight its hybrid nature, adopting Hendry and King’s definition of hybridity: ‘blended processes in either civil or criminal law that rely upon mechanisms normally associated with the other type, or those that omit procedural dimensions normally required by their own sort, and thus blur the lines between the civil and the criminal.’⁴³³ I will now consider each of the five elements of Mann’s framework in turn, considering their applicability to the use of committal.

MOVING PARTY

Committal proceedings, when used in Wales, were initiated by an application from a local authority to the magistrate’s court. In this way they were clearly more consistent

⁴³³ Hendry and King (n 427) 734.

with traditional conceptions of criminal law, as a local authority can be seen as one element of the state; this is evidenced by the fact that local authorities can be the subject of a judicial review as a public authority, considered further in Chapter Five. This underlines the major differences between enforcement of council tax debts and other forms of household debt, such as credit card arrears, where the private lender would move to initiate proceedings against the debtor.

WRONG DEFINED

Individuals who are subject to committal proceedings will already have a liability order which confirms that the council tax arrears in question were legally payable, and all billing and collection requirements of the local authority have been followed. As explained in Chapter One, enforcement methods such as use of enforcement agents or imprisonment cannot be pursued until after a liability order has been issued. Using the language of the criminal law, we could therefore state that the *actus reus*, the unlawful act and objective aspect of liability, has already been established prior to the committal hearing, save for establishing that the arrears have remained unpaid since the liability order was issued. A crucial feature of criminal offences (excluding the considerable number of strict liability offences) is that the moving party must also establish a subjective or mental element of the offence, known as the *mens rea*. In order to make a determination on committal for council tax arrears the court was required to look at subjective factors: they carried out a means enquiry and applied the test of wilful refusal and culpable neglect. The threshold for subjective liability is arguably lower than for an offence such as theft because an individual can be imprisoned on the basis of culpable neglect, which would not appear to require intention, but we can clearly see a subjective element to the legal tests for committal. It is not enough to establish that the unlawful act has been committed, the judge had to concern themselves with the subjective decisions of the debtor. By referring to the twin concepts of wilful refusal and culpable neglect, the committal regulations straddle the alternative formulations of a legal wrong found in criminal and civil law. This opens the door to situations where the criminal sanction of imprisonment is used where only the civil threshold of subjective liability has been

met, i.e. culpable neglect.

In addition to this subjective element, the act of not paying council tax is often described as an affront to ideas of collective fairness, because the majority of people pay what they are asked to pay. Here we can see a narrative much more consistent with violation of public norms than damage to private interests; failure to pay council tax is seen as a breach of the expectations of a citizen to act in the collective interest, in the same way that a criminal offence violates ideas of community safety.⁴³⁴

PROCEDURE

Moving from definitional issues to practicalities, procedural safeguards can be seen as ‘prophylactic measure[s] against an erroneous trial outcome’.⁴³⁵ They represent barriers which the moving party must overcome in order to ensure that their case has been fully proven, as well as rights and entitlements of the accused person, in this case the debtor. Courts should uphold procedural safeguards so that debtors can fully and fairly participate in the proceedings. The criminal law is associated with severe sanctions, which, to maintain public support, necessitate ‘high procedural barriers to conviction’.⁴³⁶ In terms of the focus of hearings, assessments of the ‘blameworthiness of the defendant’⁴³⁷ are fundamental in criminal matters. By contrast, the civil law is concerned with assessment and quantification of damage, resulting in less severe remedies which, in turn, require ‘lower procedural safeguards’.⁴³⁸ It is important to remember that such safeguards are self-imposed by the state by virtue of their being, inter alia, ‘a signatory to the ECHR, or upholding its rule of law’.⁴³⁹ Some fundamental procedural protections which have been the subject of legal challenge will be discussed in Chapter Five, but there are a number

⁴³⁴ Mann (n 429) 1807.

⁴³⁵ Hendry and King (n 427) 746-747.

⁴³⁶ Mann (n 429) 1799.

⁴³⁷ Ibid.

⁴³⁸ Ibid.

⁴³⁹ Hendry and King (n 427) 750.

of features of the system which on a surface level suggest it does not adhere to the paradigms of criminal or civil law.

Firstly, if committal proceedings are to be considered civil, their venue is perhaps one of the most obvious anomalies. Our legal system has developed to provide a range of different courts and judicial settings appropriate to the type of legal matter to be considered. The fact that committal hearings are dealt with by magistrate's courts, rather than typically civil courts like the county court, is a clear example of procedural hybridisation.

Perhaps because of the venue of the hearing, debtors are not entitled to have their cases heard by juries as would be typical of criminal cases heard by the Crown Court. Given that the upper limit for punishment of summary offences in criminal law is six months for a single offence, and imprisonment for council tax arrears is capped at three months, it's fair to say that the sanction used for failure to pay council tax arrears is not significantly far removed from an offence which would attract a potential custodial sentence of a length which would entitle the accused to enforce their right to a jury trial. i.e., an offence triable either way. Again, we can see this enforcement option overlapping strongly with characteristics of the criminal law, but not benefitting from corresponding procedural safeguards, such as the option to have evidence heard by a jury of your peers.

The bulk of procedural rules for criminal trials relate to admissibility of evidence, such as exceptions to the general rule prohibiting hearsay evidence. The regulations which permitted imprisonment for council tax arrears do not specify any rules about what evidence of the debtor's conduct is admissible, and because first instance cases were rarely recorded, there has been limited development of common law. This places significant power in the hands of the local authority seeking the committal in terms of the evidence they are able to adduce and how that evidence has been collected. From the perspective of the debtor, they do not benefit from the privilege

against self-incrimination of a criminal defendant,⁴⁴⁰ increasing the burden of their participation in the hearing and the risk of loss of liberty.

Procedural safeguards in criminal cases are typically present during the hearing but also after its conclusion. In criminal law where an individual receives a custodial sentence there is a requirement to explain the reasons in open court, but this does not apply for imprisonment for council tax arrears, and reasons are rarely recorded.⁴⁴¹ This frustrates any options to appeal, as the debtor lacks a written record of the legal rationale for their committal against which to base any challenge. Further, in criminal law, a custodial sentence would be preceded by a pre-sentence report which considers the potential impact of imprisonment on the individual and their family, including any ill-health that may need to be taken into account. This is not a requirement for council tax committals,⁴⁴² which has been highlighted by the number of single mothers with dependent children who have been imprisoned in recent years (c.f. *Woolcock (No. 1)* and *Aldous*). Indeed, because committal cases for council tax arrears are not considered to be prosecutions, there is no involvement from the Criminal Prosecutions Service, meaning they do not benefit from the public interest test which is typically applied to criminal prosecutions which could result in a custodial sentence.⁴⁴³ They also do not benefit from any remission of their sentence for good behaviour as is available for criminal offences.⁴⁴⁴ This combined lack of procedural protections means that the local authority is able to use the magistrates' court as a venue for council tax enforcement unburdened by procedural safeguards.⁴⁴⁵ For the debtor, this means that they must navigate a highly stressful and unfamiliar legal process without the protective structures which anyone charged with a criminal offence may take for granted.

⁴⁴⁰ Epstein, 'Imprisonment for Debt: The Courts and the Poll Tax' (n 257). 172

⁴⁴¹ Ibid.

⁴⁴² Ibid.

⁴⁴³ Ibid.

⁴⁴⁴ Ibid 168.

⁴⁴⁵ Mann (n 429) 1813.

REMEDY AND PURPOSE

Looking at the council tax enforcement system as a whole and reflecting on the enforcement methods set out in Chapter One, we can see a transition from a focus on cash assets, to earnings, to property, and finally to the liberty of the individual. The enforcement system operates against property, until the very final stage where enforcement is against the person.⁴⁴⁶ Remedies which operate against the person are inconsistent with the civil law paradigm, where claimants are normally awarded an order for payment of compensation, or an injunction to restrict future behaviour.⁴⁴⁷

The practical remedy and its purpose are closely linked. Perhaps one of the distinctions most traditionally recognised between criminal and civil law is that they have distinct motivations; ‘the criminal law is meant to punish, while the civil law is meant to compensate’.⁴⁴⁸ Committal in this context is often described as coercive, but for coercion to be optimally effective there must be evidence that some people have actually been imprisoned, to avoid a perception of an empty threat. The purpose of the sanction is confused by the fact that it has an effect both as a threat and sometimes as an actuality. This is summed up by Rock:

‘the sanctions exist in order that they should not be used. There is an explicit assumption in debt-collection that once the sanctions have been wielded, the collectors have lost. What the creditors employ, therefore, is an extensive manipulation of threats. That is why quite humane judges are happy about routinely giving orders backed with the threat of committal to prison. The enforcers and the defaulters are largely sparring.’⁴⁴⁹

⁴⁴⁶ Hendry and King (n 427) 743.

⁴⁴⁷ It should be acknowledged that in other areas of law, imprisonment is used as a sanction for contempt of court in relation to non-compliance with an injunction, but in the case of imprisonment for council tax, the subjective tests of wilful refusal and culpable neglect (discussed in Chapter One) indicate that imprisonment was not used as a sanction for contempt of court.

⁴⁴⁸ Mann (n 429) 1797.

⁴⁴⁹ Rock (n 137) 183.

If someone is threatened with imprisonment and then pays what they owe, you could describe the purpose as restitutionary, but if they fail to pay and are imprisoned then their arrears become unenforceable, making the act of imprisonment purely punitive as it has not served to recover the funds outstanding. This is distinct from the use of enforcement agents, for example, where it could also be said that it operates through threat and actuality, but when enforcement agents do follow through on their threat to remove goods, those goods are at least sold to pay off the arrears, rather than just to punish the debtor through lack of access to their possessions.

This coercive or deterrent function is problematic in the way that it leads to unacceptable compromises of fundamental procedural protections, but also because it is very difficult to evidence that coercion or deterrence leads to greater collection rates. In a legal system such as council tax enforcement which lacks a counterfactual; the reality is, we cannot know what proportion of council tax would be paid if no effort at all was invested in enforcement. The Civil Enforcement Association commissioned Europe Economics to conduct a study which attempts to predict the level of non-payment of council tax if enforcement action was limited. They concluded that 'local authorities would collect between £5.7 billion and £12.0 billion less in council tax every year under limited enforcement.' The findings of this report are based upon significant assumptions which the authors acknowledge: 'one important way this might or might not mean the model distorts with its prediction is worth dwelling upon: the effect of those that cannot (as opposed to choose not to) pay.' This limitation of their model is defended based on a further significant assumption: 'its implications may be limited partly because the pattern of enforcement reflects the fact that enforcement agents are skilled at distinguishing between those that are unable to pay and those that choose not to'. Although an attempt to model a counterfactual is to be welcomed, the reliability of this model is questionable given the large assumptions which it is based upon, and because of the fact that it was commissioned by CIVEA, the principle trade association representing civil enforcement agencies in England and Wales, who have a commercial interest in

research which justifies the use of enforcement agents.⁴⁵⁰ The deterrent or coercive function is therefore poorly warranted⁴⁵¹ and, as I will argue in Chapter Eight, emotionally driven.⁴⁵²

Even though there is no criminal record as a result of being imprisoned for council tax arrears, the individual will still have all of the stigmatisation of having been in prison, along with the long-term impacts on housing, dependents, employment and social security. Criminal convictions receive much greater social condemnation than civil law judgements in our society,⁴⁵³ and it cannot be assumed that the general public will appreciate the distinction between those who are imprisoned for council tax arrears and those who are imprisoned as a result of criminal convictions.⁴⁵⁴

The use of imprisonment for council tax arrears therefore violates the criminal and civil law binary in all of the five fundamental characteristics defined by Mann. Within the wider literature on civil and criminal law hybrids, it has been argued that such hybridisation often occurs where there is a perceived inadequacy with the original system of laws. For example, Hendry and King have written extensively on the use of non-conviction-based asset seizure as an attempt to control organised crime. In this area of law, a conflict arises 'between the goals of controlling high-level, high-value criminal activity and ensuring the adequate observance of the alleged perpetrator's civil and political rights'.⁴⁵⁵ As a result of a perception that the criminal law was not effective enough in deterring this kind of illegal activity, there has been a turn to civil law remedies because of the way in which they permit recovery without the burden

⁴⁵⁰ Europe Economics, 'The Impact of Enforcement on Tax and Fines Compliance' (2021).

⁴⁵¹ This is similar to the position for the law of forfeiture, about which Hay comments: 'little material exists respecting forfeiture's effectiveness in deterring crime. This dearth of research is bewildering in light of the frequency with which the effectiveness of forfeiture is cited in justification of its employment.' King (n 429) 352.

⁴⁵² Simon Halliday, 'Administrative Justice and Street-Level Emotions: Cultures of Denial in Entitlement Decision-Making' [2021] Public Law 727. Alexander G. Baker has also considered the role of emotions in the work of bailiffs who conduct evictions: 'Learned habit, on-the-job training and intuitive practice in eviction produces sets of emotional tools that are tested and tried in the process of eviction.' Alexander G Baker, 'Bailiffs at the Door: Work, Power, and Resistance in Eviction Enforcement', *Geographies of Forced Eviction: Dispossession, Violence, Resistance* (1st edn, Palgrave Macmillan London 2017) 154.

⁴⁵³ King (n 427) 339.

⁴⁵⁴ Hendry and King (n 247) 749.

⁴⁵⁵ *Ibid* 736.

of high procedural barriers.

Ashworth and Zedner highlight the same hybridisation in the development and use of Anti-Social Behaviour Orders (hereafter ASBOs), where breach of a civil order can invite criminal sanctions. They identify the loss of individual liberty as the limit for the mixing of civil and criminal processes: ‘if the government is not prepared to extend full procedural protections to persons found responsible for certain behaviour, the corollary should be that the criminal process should not be used, and the penalties should remain at a low level...and certainly should exclude imprisonment.’⁴⁵⁶

I have demonstrated the way in which imprisonment for council tax arrears has been a victim of form over substance;⁴⁵⁷ if something is labelled as civil then that is what it is.⁴⁵⁸ Because of the dominance of its civil form, debtors were left in highly vulnerable legal positions. Not only were they vulnerable because of the lack of procedural protections, but because of the socio-economic bias of punitive civil sanctions; ‘by their very nature, punitive civil sanctions are effective only against those who pay...while the middleground sanctions should help to keep some people out of prison, those who cannot pay will go to prison. This would only exacerbate the existing inequality.’⁴⁵⁹ We can therefore see the use of this sanction as a compounding force of procedural vulnerability on top of economic vulnerability. This procedural vulnerability has been challenged by those able to access legal support, and in the next chapter we will see how case law is a rich source of evidence about the use of imprisonment and its legal categorisation.

COUNCIL TAX ENFORCEMENT STAFF AS STREET-LEVEL BUREAUCRATS

The second concept is the street-level bureaucrat (hereafter SLB), a label developed by Michael Lipsky in his 1980 text sub-titled ‘The Dilemma of the Individual in Public

⁴⁵⁶ Andrew Ashworth and Lucia Zedner, ‘Defending the Criminal Law: Reflections on the Changing Character of Crime, Procedure, and Sanctions’ (2008) 2 *Criminal Law and Philosophy* 21, 49.

⁴⁵⁷ Mann (n 429) 1820.

⁴⁵⁸ *Ibid.*

⁴⁵⁹ *Ibid* 1872-3.

Services'.⁴⁶⁰ Behind this label lies a conceptual framework for interpreting the work of public services and government agencies which I will argue is instructive and illuminating when applied to the decision-making processes of local authority council tax enforcement staff in Wales. In this section I will set out the key tenets of the SLB concept, reflect on some of its limitations and explain how I enhanced the utility of the SLB concept with reference to Halliday's focus on the emotional elements of SLB decision-making, such as the fear of being duped.⁴⁶¹

Primarily a work of public policy and public administration research, Lipsky's 1980 book focused on 'the place of individuals in those public services I call street-level bureaucracies...whose workers interact with and have wide discretion over the dispensation of benefits or the allocation of public sanctions.'⁴⁶² Lipsky's work built upon an increasing academic interest in public administration in the mid-20th century which followed the publication of Max Weber's model of rational bureaucracy.⁴⁶³ He used teachers, police officers, judges and welfare agency staff as instructive examples of the SLB concept, defined by their close interaction with members of the public and their substantial discretion when making decisions.⁴⁶⁴

In analysing the practices and tendencies of this population Lipsky was critical of 'top-down' policy implementation theorists, 'who believe policy to be a blueprint implemented by an organisational bureaucracy'.⁴⁶⁵ Instead, he favoured a bottom-up theory, where 'policy is created in a complex field of tensions and demands by enterprising front line workers';⁴⁶⁶ he saw SLBs as an integral part of the public policy implementation process through their decisions, routines and devices which

⁴⁶⁰ Michael Lipsky, *Street-Level Bureaucracy: Dilemmas of The Individual in Public Services* (Russell Sage Foundation 1980).

⁴⁶¹ Halliday (n 452) 729.

⁴⁶² Lipsky (n 460) xi.

⁴⁶³ Fritz Sager and Christian Rosser, 'Weberian Bureaucracy' (*Oxford Research Encyclopedia of Politics*, 29 September 2021) <<https://oxfordre.com/politics/view/10.1093/acrefore/9780190228637.001.0001/acrefore-9780190228637-e-166>> accessed 16 October 2022; M. Weber, *Economy and Society: an outline of interpretive sociology* (1921).

⁴⁶⁴ Lipsky (n 460) 3.

⁴⁶⁵ T Evans, 'Professionals, Managers and Discretion: Critiquing Street-Level Bureaucracy' (2011) 41 *British Journal of Social Work* 368, 369.

⁴⁶⁶ *Ibid.*

‘effectively become the public policies they carry out’.⁴⁶⁷

As will be evidenced by the three sources of empirical data in this thesis, despite operating under the same rules and regulations, many public service organisations (such as local authorities) take different approaches and make varied decisions about what appropriate, fair, and effective enforcement action looks like. The SLB concept assists us in understanding this variation in process and outcome. Applying this to council tax enforcement, I argue that any research that positions national government as having total control over law or policy implementation in relation to the enforcement of council tax arrears would provide an incomplete analysis. In their day-to-day work, local authority enforcement staff across Wales create and re-create policy at a micro-level, and it is for this reason that they warrant an in-depth analysis both in terms of their use of imprisonment, the specific focus of this thesis, but also in their future practices without the option of imprisonment. In encouraging such an analysis, I intend to make the point that, in the case of imprisonment for council tax, many local authorities stopped using this option of their own volition prior to the option being removed from the regulations, and in the same way many local authorities, as evidenced by the interview analysis, will continue to assume that punitive, criminal-style enforcement methods are appropriate and necessary. There is more to this than changes at the top.

Although somewhat radical at the time of its publication, there is now something of a consensus that ‘to view central government as the primary determinant of policy outcomes from inception to implementation is flawed.’⁴⁶⁸ Using this framework highlights the different levels of authority which influence council tax enforcement: the legislature who enact the regulations which stipulate what action can be taken to pursue arrears, the local authority staff who interpret those regulations and make decisions about appropriate enforcement methods to use, and the courts who process appeals against decisions of local authorities.

⁴⁶⁷ Lipsky (n 460) xii.

⁴⁶⁸ Sarah Alden, ‘Discretion on the Frontline: The Street Level Bureaucrat in English Statutory Homelessness Services’ (2015) 14 *Social Policy and Society* 63, 65.

Lipsky’s analysis, and the framework developed from it, situates individuals within their work environment, and draws out the interaction between working conditions and work practices. He identifies ‘five common conditions that give rise to common patterns of practice and affect the direction these patterns take.’⁴⁶⁹

| | | | | |
|------------------------------------------------------------------------------------------|---------------------------------------------------------------|----------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------|----------------------------------------------------|
| Resources are chronically inadequate relative to the tasks workers are asked to perform. | The demand for services tends to increase to meet the supply. | Goal expectations for the agencies in which they work tend to be ambiguous, vague, or conflicting. | Performance oriented toward goal achievement tends to be difficult if not impossible to measure. | Clients are typically nonvoluntary. ⁴⁷⁰ |
|------------------------------------------------------------------------------------------|---------------------------------------------------------------|----------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------|----------------------------------------------------|

In applying a conceptual framework, it is asserted that the application need not be dogmatic or slavish to every feature or assumption. This is to be expected for a conceptual framework with applicability across such a diverse range of research settings.⁴⁷¹ Lipsky acknowledges this himself: ‘if for some reason these characteristics are not present, the analysis is less likely to be appropriate, although it is instructive to understand why this is the case.’⁴⁷² In the following section I will set out how and to what extent the five elements of the SLB framework align with the local authority council tax context, demonstrating that in several respects this organisational setting is an apposite and compelling example of a street-level bureaucracy.

⁴⁶⁹ Lipsky (n 460) 27-28.

⁴⁷⁰ Ibid.

⁴⁷¹ Alden (n 468) 74.

⁴⁷² Lipsky (n 460).

CHRONICALLY INADEQUATE RESOURCES

In terms of resources, there is clear evidence of the impact of austerity on the work of local authorities, leading to them being described as ‘one of the foremost casualties of the fiscal austerity which has characterised UK public policy since the 2010 Comprehensive Spending Review’.⁴⁷³ In Wales, the block grant received from the UK Government has fallen by 5% in real terms since 2011, and Welsh local authorities have seen an average reduction in service spending of 12% between 2009 and 2017.⁴⁷⁴ In terms of funding from Welsh Government, Sion and Ifan estimate that the value of block grants have fallen by 16.8% in real terms between 2009 and 2020.⁴⁷⁵ This curtailment of funding has knock-on effects on the adequacy of resources such as, inter alia, the number of enforcement staff, equipment and training.

It is particularly pertinent to reflect on the adequacy of resources given that one response to the restriction of budgets through austerity has been for local authorities to increase the rate of council tax in order to raise greater revenue to pay for services,⁴⁷⁶ which includes enforcement services. As stated in Chapter One, council tax rates have increased year on year; since 2012 the average Band D council tax charge has increased by 45.7%. Council tax now occupies a larger share of total tax revenue in Wales than in England and Scotland; it now funds one fifth of the expenditure in Wales, up from 14% in 2009.⁴⁷⁷ Taken in the round, we can see that local authorities are now expected to do more with less. Furthermore, the successful collection and enforcement of council tax has a direct relationship with the level of resources which local authority staff will have to complete their work. Therefore, we could rework and expand this element of Lipsky’s framework to say that, for local

⁴⁷³ Annette Hastings and others, ‘Coping with the Cuts? The Management of the Worst Financial Settlement in Living Memory’ (2015) 41 *Local Government Studies* 601.

⁴⁷⁴ James Downe and Emma Taylor-Collins, ‘At the Tipping Point? Welsh Local Government and Austerity’ (Wales Centre for Public Policy 2019) 6.

⁴⁷⁵ Cian Sion and Guto Ifan, ‘Local Government & the Welsh Budget: Outlook and Challenges for the next Welsh Government’ (Wales Fiscal Analysis 2021) 5.

⁴⁷⁶ Downe and Taylor-Collins (n 474) 5.

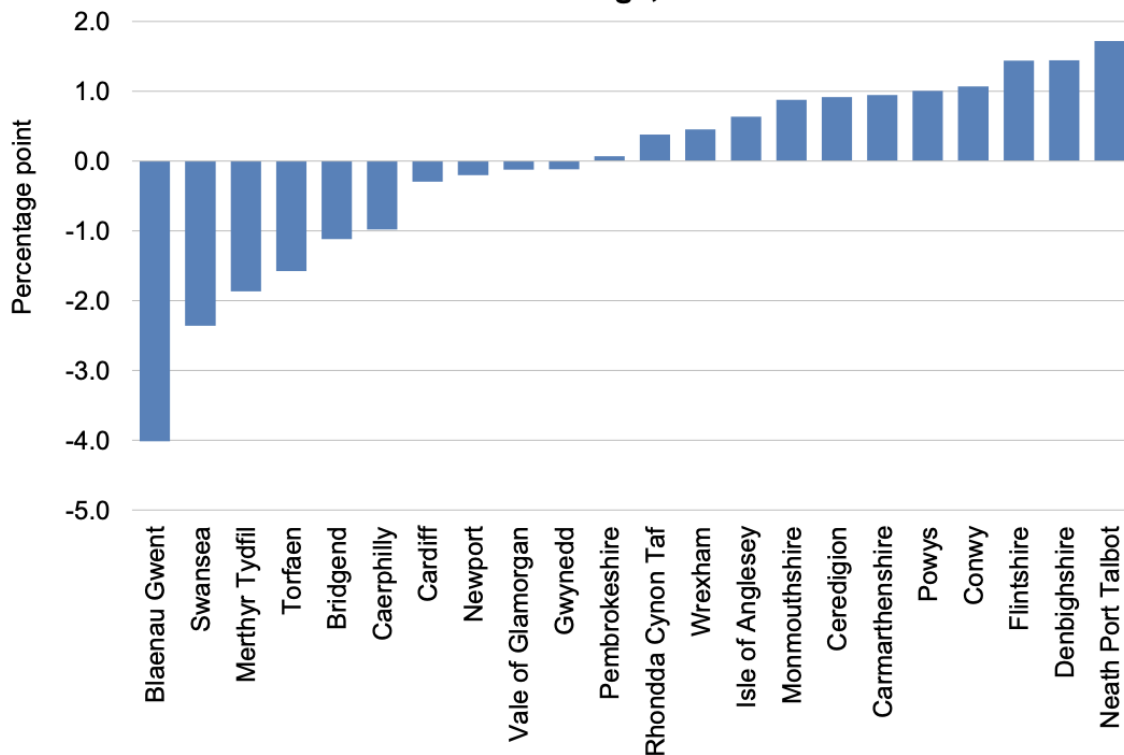
⁴⁷⁷ Sion and Ifan (n 475) 9.

authority SLBs, not only are resources chronically inadequate relative to the tasks they are asked to perform, but the success of the enforcement tasks workers are asked to perform directly determines the adequacy of future resources.

INCREASED DEMAND FOR SERVICES

This increase in rates of council tax, which has in general outstripped increases in other living costs and average wages, inevitably causes a greater number of taxpayers to fall into higher levels of arrears as the affordability of the tax decreases for larger numbers of people. Here, the second element of the SLB framework, the increase in demand for services, is conceived of as the increase in the work required of local authorities to enforce payment of council tax arrears, over and above their general billing and collections work. The taxpayer is expected to pay more with less, and front-line staff of local authorities are expected to collect more, with less. This expectation to maintain or improve collection rates is reflected in the annual publication of local authority statistics, with authorities ranked according to their collection rate, as shown in the graph below taken from the annual council tax statistical release.

Chart 1: Council tax collection rates: percentage point difference from the Wales average, 2021-22



This being said, it is acknowledged that this element of the SLB framework is the least comfortable fit for local authority council tax staff because of the need to reinterpret ‘service’ as the legal enforcement of debts. Kennett highlights the problems inherent in identifying service users in the context of civil enforcement of debts, arguing that the conceptualisation of debtors as service users ‘depends on the nature of the ‘service’ being provided’.⁴⁷⁸ Similar dissonance can be seen in the common description of council tax debtors as ‘customers’ in relation to the ‘customer service’ provided by local authority staff (discussed further in Chapters Seven and Eight).⁴⁷⁹ Although this does not fit the traditional understanding of service seen in other SLB professions, such as teachers or police officers, I take the position that there is still an undeniable connection between the resources of local authorities and an ever-increasing demand for resolution of arrears, conceptualising the service as inclusive of work to combat poverty.⁴⁸⁰

⁴⁷⁸ Wendy Kennett, *Civil Enforcement in a Comparative Perspective: A Public Management Challenge* (Intersentia 2021) 112-113.

⁴⁷⁹ Kennett (n 478) 113.

⁴⁸⁰ Ibid.

EXPECTATIONS OF PERFORMANCE

This leads into the role of goal expectations and performance measures (the third and fourth element of the SLB framework). This formed a key strand of the semi-structured interviews with local authorities, as decisions about enforcement methods are influenced by the motivations of the profession and underlines the importance of a socio-legal approach as such influences and motivations would not be accessible through a purely doctrinal study. Collection of maximum council tax is an external goal or performance measure but, for local authorities in Wales who are increasingly expected to assume greater levels of responsibility for local taxation, other measures of performance have developed organically, and are often influenced by trends in external critique of their work, such as the emphasis placed on vulnerability of debtors in recent years, or emphasis on the ways in which complaints are dealt with. Herein lies the unavoidable tension of council tax enforcement; there is a conflict between the expectation to collect all council tax billed each year and the expectation not to cause harm to residents whose circumstances may make them vulnerable. In addition, performance measures such as volumes of complaints can be ambiguous, as it is unclear whether an increase or decrease constitutes better or worse performance. Performance measures are discussed further in Chapters Seven and Eight.

NON-VOLUNTARY CLIENTS

Given the increases in the rate of council tax charged which has not been associated with an increase in wages, taxpayers fall into arrears. By their nature, the client of the local authority is clearly non-voluntary, similarly to Lipsky's own case study example of clients of welfare agencies seeking assistance with housing costs or other benefits. Extending this element of the framework, council tax as a household cost is by its very nature non-discretionary, compared with other types of debt or credit which involve an element of free choice. The expectation to pay council tax arises as a feature of citizenship, and therefore there is a dual relevance of the idea of being non-voluntary when applying the SLB framework to council tax debtors.

Here I have summarised the relevance of the five major elements of the SLB framework to council tax enforcement. Despite the four decades that have elapsed since its publication, and the original focus on public services in the United States, the concept of the street-level bureaucrat is now widely utilised in policy research and more broadly.⁴⁸¹ As noted by Alden, who uses the SLB concept in her research on homelessness services, whilst most researchers ‘concur with the principle factors that make up the street-level bureaucrat...[they] modify elements to reflect specific research findings, or contemporary developments.’⁴⁸²

An application of the SLB concept to the modern day requires it to be removed from the literal ‘street-level’; the reality of interactions between SLBs and clients is that they now almost exclusively take place over the telephone, video-conferencing software or via email. This undoubtedly affects the nature of the interaction between SLBs and their clients in what Bovens and Zouridis call the transition from street-level to ‘screen-level bureaucracy’; ‘insofar as the implementing officials are directly in contact with citizens, these contacts always run through or in the presence of a computer screen.’⁴⁸³

Many have criticised Lipsky for what they see as an exaggeration of the level of discretion available to employees he describes, and an underestimation of the influence of managers in curtailing that discretion and controlling decision-making. However, Lipsky arguably demonstrates realism when considering the numerous limiting factors, not seeing discretion as a binary of presence or absence; ‘this is not to say that street-level workers are unrestrained by rules, regulations, and directives from above, or by the norms and practices of their occupational groups.’⁴⁸⁴ Many authors who have critiqued this absence of managerialism have used examples of specific industries which, because of a trend towards professionalism and regulation,

⁴⁸¹ Alden (n 468) 66.

⁴⁸² Ibid.

⁴⁸³ Mark Bovens and Stavros Zouridis, ‘From Street-Level to System-Level Bureaucracies: How Information and Communication Technology Is Transforming Administrative Discretion and Constitutional Control’ (2002) 62 *Public Administration Review* 174, 177.

⁴⁸⁴ Lipsky (n 460) 14.

have seen their levels of discretion reduced in recent years. This is not necessarily relevant to an SLB framework as it applies to local authority enforcement staff, who do not appeal to any external mark of their qualification for the role, in the same way that social workers or teachers might, and whose professionalism and management structure is primarily grounded in experience of the work. This will be considered further in Chapter Seven, when local authority staff discuss how they navigate the legal nature of their role despite not having legal qualifications.

This being said, the role and influence of managers does pose a challenge in terms of the methodological approach of this research. Despite referring to interviews with 'a member of staff of your council tax enforcement department' in the invitations to participate in the research, all of my invitations were responded to by the Revenues and Benefits Managers of each local authority, and these individuals, as well as some Enforcement Managers, participated in the five interviews subsequently arranged. Therefore, my research applies the SLB framework to empirical data which was not generated by front-line or street-level members of staff. This is a limitation of the research but is symptomatic of a wider issue of researcher access to the work of local authorities and their frontline staff. As a result, my analysis remains one step removed from direct observation of SLBs at work, but it does overcome the common critique of Lipsky by introducing an understanding of the role of managers and their influence on SLBs. If an SLB analysis focuses on factors such as demand, resources and performance measures, then the role of a manager is fundamental in understanding decision making.

In this thesis I intend to apply the concept of the SLB as an analytical lens through which to make sense of the empirical data collected on the use of imprisonment for council tax arrears. More specifically, my analysis was most informed by the version or interpretation of SLB analysis developed by Halliday; this perspective encourages research with a focus on street-level practices but cautions against an over-emphasis on the rationality of decision-making absent of any consideration of the emotional dimensions. Halliday sees emotions and rationality as 'inextricably linked' in the

decision process.⁴⁸⁵ This is evidenced by analysing the judgements made about whether a claimant is telling the truth about their circumstances,⁴⁸⁶ in the context of applications for asylum. He argues that: 'a fear of being duped shapes how bureaucracies resolve their uncertainty about claimants' honesty, and orients bureaucracies towards not giving claimants the benefit of the doubt.'⁴⁸⁷ This minor reorientation of the SLB concept enhanced its utility for my own analysis, as it opened up ways to explore both the context within which local authority SLBs work but also how this influences their attitudes to debtors, which in turn inform their attitudes to risk and error preferences.⁴⁸⁸ It also gave weight to the cautionary benefit of the SLB concept, as it disrupts the idea that purely rational interventions like improved training or guidance can, in isolation, lead to fairer enforcement decisions. Halliday looks for a more fundamental improvement of the emotional health of SLBs, encouraging us to look more carefully as socio-legal researchers at the non-rational aspects of legal decision making, particularly when those decisions are taken by lay participants.

The concepts of the punitive civil sanction and the street-level bureaucrat were elucidatory in this research context because they both act as effective cautionary concepts. There are benefits to hybridisation in some areas of law and the discretionary work of street-level bureaucrats can often lead to the most pragmatic decisions informed by professional experience. However, in the context of council tax enforcement, these concepts highlight the inconsistent and problematic legal status of committal which impacts negatively on debtor rights, and the way in which local authority discretion can be negatively influenced by a range of factors unique to the working environment and expectations of the role. Both concepts also relate to attitudes to risk; punitive civil sanctions undermine the well-established position of criminal law as being inherently risk averse and of the view that a wrongful conviction is worse than a wrongful acquittal.⁴⁸⁹ Equally, street-level bureaucrats demonstrate

⁴⁸⁵ Halliday (n 452) 744.

⁴⁸⁶ Ibid 729.

⁴⁸⁷ Halliday (n 452) 729.

⁴⁸⁸ Ibid 732.

⁴⁸⁹ Hendry and King (n 427) 746; Halliday (n 452) 733.

their error preferences, which in the case of council tax prioritise deterrence over fairness in the individual case.

As will be discussed further in Chapter Eight, this pair of concepts also overlap in the way that they demonstrate the prioritisation of consequentialist thinking⁴⁹⁰ about the appropriate way to enforce council tax arrears. Future deterrence is valued more highly than present fairness, both in terms of the type of legal sanctions threatened (punitive civil sanctions) and the way in which decisions are made about appropriate enforcement measures (street-level bureaucrats and emotional responses). In categorising the use of imprisonment as civil, when it arguably better fits a hybrid status, courts can be seen to prioritise the severity of the sanction over the procedural rights and protections of the debtor, in the pursuit of efficiency. Equally, in their emotional responses to individual debtors, local authority staff show their fear of losing their authority over the wider tax base and as a result make decisions which prioritise sending a deterrent message to the public over making the fairest decision for the case in hand. For these reasons the concepts were elucidatory when studying the role of the courts and local authorities in the legal enforcement of council tax arrears.

⁴⁹⁰ King (n 427) 341.

CHAPTER FIVE – JUDICIAL REVIEW OF IMPRISONMENT

INTRODUCTION

This chapter presents the first of three stages of analysis of evidence relating to the use of imprisonment as an enforcement method for council tax arrears in Wales. It applies the concept of the ‘punitive civil sanction’ to judicial reviews of decisions of magistrates to imprison individuals in arrears to local government. This analysis builds on the earlier discussion of legal hybrids in Chapter Four, using case law as a source to explore the aspects of Mann’s framework of civil and criminal law which have been contentious. The aim of the analysis was to understand the ideas and assumptions which informed the use of imprisonment for council tax arrears, by reference to the legal reasoning applied to appeals against committal. It is my assertion that these ideas and assumptions have influenced the decision-making process of those tasked with council tax enforcement, including local authority staff, and should be seen as part of the broader discourse. Not all of the cases discussed remain good law or the most up to date precedent, but I argue that their reasoning has informed ideas around the use of committal.

The first source of evidence to be analysed was a group of twenty-three case law reports; the majority of the cases concerned appeals against imprisonment for arrears of council tax, community charge or domestic rates, by way of judicial review. Three cases were claims for breach of Articles 5 and 6 of the Human Rights Act, the rights to liberty and to a fair hearing. The cases span the period 1988 to 2018.

Although the cases relate to arrears of three types of local taxation (domestic rates, community charge and council tax), they have been analysed together because the enforcement of these taxes was dictated by almost identical statutory provisions⁴⁹¹, all of which required magistrates to apply the key concepts of ‘wilful refusal’ and ‘culpable neglect’ to individuals in debt to local government. This is consistent with

⁴⁹¹ General Rates Act 1967, s 103; The Community Charge (Administration and Enforcement) Regulations 1989, reg 41; CT(AE)R 1992, r 47.

Cross' assertion that the underpinning principles of imprisonment for debt subsisted throughout the different iterations of local taxation.⁴⁹²

The case of *Woolcock (No.2)*, in which a judicial review was brought on the basis of procedural fairness of the whole system of imprisonment for council tax, represents a landmark case in this legal area and, I argue, was instrumental in ending the practice of imprisonment in Wales. Because of this it warrants full consideration in the next chapter.

Despite the severity of possible outcome, records of the original magistrates' committal hearings were not commonly maintained, meaning that evidence of what occurred in these initial hearings is very limited, based on affidavits where they are available. This poses an unacceptable limitation on oversight of the content of committal hearings and their outcomes. Despite this, appeals against committals can serve as a rich source of evidence. Once committed to prison, the debtor has the option to apply for a judicial review through which their case will be examined by the Queen's Bench Division of the High Court. The debtors seek a quashing order in relation to the decision to issue the warrant of commitment. The justices who made the original decision to commit do not take part in the judicial review hearing in person but submit a witness statement setting out the grounds of the decision in issue. Several of the cases considered concerned applications jointly issued against both the magistrates' court who dealt with the first hearing and the local authority seeking the committal order, both of which fall within the scope of a public authority for the purposes of judicial review. The process of judicial review which debtors engage with is designed to ensure that these public authorities act lawfully and provides evidence that such authorities 'are accountable to the law and not above it... protecting the rights and interests of those affected by the exercise of public authority power.'⁴⁹³ When the liberty of debtors is at risk there is necessarily a great deal of power in the hands of the magistrates, making these judicial review cases

⁴⁹² SH Bailey, *Cross on Local Government Law* (9th edn, Sweet & Maxwell 2022) 16-53.

⁴⁹³ M Fordham, *Judicial Review Handbook* (2nd edn, London: Wiley Chancery Law Publishing, 1994) 1.1.

matters of clear public interest.

Following Mann's framework, as set out in Chapter Four, I will consider what the case law tells us about how the wrong is defined, its purpose and what procedures were followed during the committal hearing. Drawing examples from the case law reports, I will first make the argument that imprisonment in this context was historically incorrectly defined as a civil law sanction by first instance judges, leading to a successful challenge in the European Court of Human Rights.

Linked to the way in which it is defined, I will then consider what the case suggests about what the ultimate purpose of committal was, reflecting on constructions of imprisonment as a mechanism for coercion, deterrence, and punishment.

These problems of incorrect definition and unclear purpose are exacerbated when combined with the third aspect of this critical analysis; the way in which procedural rules are inconsistently applied and restrict fundamental rights of the debtor. First, I will consider the treatment of evidence, specifically the application of the concepts of wilful refusal and culpable neglect to the actions of debtors. These concepts have not been satisfactorily defined or justified in their application to the evidence provided by local authorities. I will argue that this test has been applied predominantly with reference to the minimal information available about the debtor's conduct prior to the hearing, to the exclusion of relevant conduct presented during the hearing itself.

In the final section, I will focus on three key forms of procedural protection which are uncontroversial in other legal matters associated with a risk to liberty: legal representation, appeals, and proportionality of sanctions.

DEFINITIONS IN DOMESTIC LAW

As discussed in Chapter Four, the way in which law is defined as civil or criminal has a significant impact on almost every characteristic of the process. Despite this definition being a fundamental aspect of the law, we can see in the case law on

imprisonment for council tax open discussion of how it should be categorised, typically to answer supplementary questions about procedural requirements which stem from that definition as civil or criminal.

In many of the cases analysed, appeal judges used direct comparison between the way in which parties are treated in civil and criminal matters as a justification for their arguments. For example, in the case of *Ursell*,⁴⁹⁴ in arguing that courts should be permitted to vary their original orders where the circumstances of the debtor have changed, the judge stated that: 'I find it difficult to believe that the law should treat a criminal who has been fined with greater consideration than a person who has failed to pay their community charge.'⁴⁹⁵

A further example of this kind of comparison can be seen in the more recent case of *Aldous*⁴⁹⁶, in which there was discussion of the extent to which magistrates should give consideration to children or dependants of debtors facing committal. The judge commented that, 'in deciding whether a term of committal for debt is appropriate, the duties of the court can be no less than they are in fixing a term of imprisonment on a criminal matter'.⁴⁹⁷ The judges position the matter they are dealing with against the extreme of a criminal offence which has the effect of highlighting a clear lack of safeguards for debtors. The severity of the sanction of imprisonment is being underlined by judges who are motivated to draw an analogy with how they would deal with cases of intentional criminal acts, as opposed to breach of civil obligations. This is common perhaps because magistrates spend the majority of their time dealing with criminal matters, including, at least initially, the most serious offences against the person. The venue of the committal hearing in a criminal court is of course a further complicating factor in its position on the criminal-civil spectrum.

One fundamental criterion which stems from the legal paradigm but remains unclear in the context of imprisonment for council tax arrears, is the burden of proof. This is

⁴⁹⁴ *R v Faversham and Sittingbourne Magistrates' Court, ex parte Ursell* [1992] 3 WLUK 200

⁴⁹⁵ *Ursell* (n 497) [8].

⁴⁹⁶ *R (on the application of Aldous) v Dartford Magistrates' Court* [2011] EWHC 1919 (Admin).

⁴⁹⁷ *Aldous* (n 499) [16].

defined by Mann as one of the key procedural differences between criminal and civil law; the criminal law, by virtue of its associated risk to the liberty of the defendant, demands that a high threshold be applied to the assessment of evidence, meaning that guilt cannot be established unless it is assessed to be beyond reasonable doubt. In a typical civil law matter the burden is much less, demanding that liability be established on the balance of probabilities. The burden of proof to be applied to committal in this context was considered in the case of *Martin*⁴⁹⁸, where it was concluded that ‘applying their minds properly to the considerations involved applying a burden of proof “of a high standard, not simply the ordinary civil standard of balance of probability.”’⁴⁹⁹ In the later case of *Wandless*,⁵⁰⁰ Mr Justice King exemplified the conflict between civil and criminal procedural standards in commenting:

Although I accept that the standard of proof applicable to a finding of wilful refusal or culpable neglect is the civil standard of the balance of probabilities, nonetheless I equally accept that since an application for an order for committal concerns the liberty of the individual, there is a requirement that the evidence to satisfy that standard of proof should be of a sufficiently high cogency.⁵⁰¹

The lack of certainty over something as fundamental as the standard of evidence for a legal sanction which deprives the debtor of their liberty is perhaps the most stark example of its confused legal status. Perhaps unsurprisingly given the open discussion of its confused status, this area has been the subject of claims of breach of human rights.

DEFINITIONS IN THE EUROPEAN COURT OF HUMAN RIGHTS

⁴⁹⁸ *R v South Tyneside Justices, ex parte Martin* [1995] 7 WLUK 395.

⁴⁹⁹ SH Bailey, *Cross on Local Government Law* (9th edn, Sweet & Maxwell 2022) r 87; *Martin* (n 501).

⁵⁰⁰ *R (on the application of Stephen Wandless) v Halifax Magistrates’ Court and Calderdale Metropolitan Borough Council* [2009] EWHC 1857 (Admin).

⁵⁰¹ *Wandless* (n 503) [11].

The question of whether committal for council tax arrears was a criminal sanction or a civil law remedy was considered by the European Court of Human Rights (hereafter ECtHR) in the case of *Benham (No.2)*⁵⁰² because of its relevance in a claim for breach of Article 6 of the European Convention on Human Rights. The 1976 case of *Engels v Netherlands* established that states cannot unilaterally determine whether something is a criminal charge or not and set out a three-stage test for the courts to apply in policing this boundary between criminal and civil law: the domestic classification, the nature of the offence and the severity of the penalty.⁵⁰³

In relation to Article 6, Mr Benham argued that the failure to provide him with legal representation prevented him from having a fair hearing and contributed to his imprisonment. In deciding on this aspect of his claim, particular consideration was given to Article 6, subsection 3(c):

3. Everyone charged with a criminal offence has the following minimum rights:

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require.

It therefore fell to be considered whether the 'offence' with which Mr Benham had been charged was criminal in nature. In support of his claim that committal for council tax arrears was criminal, he referred to the fact that 'what was in issue was not a dispute between individuals but rather liability to pay a tax to a public authority.'⁵⁰⁴ Here, he sought to distance his own matter from traditional civil legal matters between private individuals, an example of the distinction in moving party identified by Mann.

⁵⁰² *Benham v United Kingdom* (1996) 22 EHRR 293.

⁵⁰³ *White* (n 429) 600.

⁵⁰⁴ *Benham (No.2)* (n 505) [54].

He further argued that many of the features of the proceedings were criminal ‘such as the safeguards available to defendants aged under 21, the severity of the applicable penalty and the requirement of a finding of culpability’.⁵⁰⁵ The severity of the penalty supports the assertion that imprisonment for local tax debt is more consistent with the remedy and purpose of criminal law. Furthermore, the requirement to establish culpability pushes this sanction closer to the wrong defined in criminal law, subjective liability, and away from objective liability. Mr Benham did not deny the existence of the arrears but asserted that he could not pay them.

In response, the UK Government argued that Article 6(3)(c) was not applicable to Mr Benham’s case because the committal proceedings he had been the subject of were civil rather than criminal in nature, this being ‘borne out by the weight of the English case-law’.⁵⁰⁶ This was backed up by a declaration that ‘the purpose of the detention was to coerce the applicant into paying the tax owed, rather than to punish him for not having paid it.’⁵⁰⁷

In reaching a decision on this issue, the court applied the *Engels* criteria to decide the status of the law, and in turn whether an individual faced with committal proceedings would be eligible for the protection afforded by Article 6(3)(c); the classification of the proceedings under national law, the nature of the proceedings and the nature and degree of severity of the penalty.⁵⁰⁸

In terms of the first criterion, the court agreed with the UK Government’s assertion that this kind of committal was considered as civil in the domestic authority.⁵⁰⁹ This could be seen as an example of what Mann calls a positivist view of a sanction; ‘if a sanction is labelled civil, it is civil.’⁵¹⁰ The surface level nature of this analysis may explain why the court described the first criteria as ‘of relative weight and serves only

⁵⁰⁵ *Benham (No.2)* (n 505) [54].

⁵⁰⁶ *ibid* [55].

⁵⁰⁷ *Ibid*.

⁵⁰⁸ *Ravnsborg v Sweden* (1994) 18 EHRR 38; *Benham (No.2)* (n 505) [56].

⁵⁰⁹ *Benham (No.2)* (n 505) [56].

⁵¹⁰ Mann (n 429) 1820.

as a starting point'.⁵¹¹

In assessing the 'nature of the proceedings', the second aspect of the test, the Court highlighted the general applicability of the law on committal in this area to all citizens, the proceedings being brought by a public authority under statutory powers.⁵¹² In addition, they characterised the requirement to establish wilful refusal and culpable neglect as punitive, although they did not provide any further justification of this.⁵¹³

In reaching their decision, reference was made to comments in the wider case law which demonstrate that the definition of committal in this context is a matter of both the purpose and the nature of the proceedings.⁵¹⁴ Henry J. in the case of *Watkins*⁵¹⁵ concluded that 'the proceedings under regulation 41 are plainly legal proceedings other than criminal proceedings. They are proceedings for the recovery of an unpaid tax.'⁵¹⁶ The judges were particularly persuaded by the severity of the potential maximum penalty of three months' imprisonment, as well as the actual penalty of thirty days' imprisonment.⁵¹⁷ Applying all three criteria, the court concluded that Mr Benham *had* been charged with a criminal offence for the purposes of Article 6.⁵¹⁸

This echoes the positivist arguments of the UK government in their defence, and although it may accurately define *what* is being done, ignoring all questions of the efficacy of this method of enforcement, it ignores the equally important question of *how* this purpose is being carried out. The movement of the enforcement process from the civil tradition into the criminal at the committal hearing stage was acknowledged by Sedley J. in the case of *Martin*⁵¹⁹: 'although the initial obligation to pay community charge was a civil one, magistrates who have reached the point of

⁵¹¹ *Weber v Switzerland* (1990) 12 EHRR 508; *Benham (No.2)* (n 505) [56].

⁵¹² *Benham (No.2)* (n 505) [56].

⁵¹³ *ibid.*

⁵¹⁴ *Benham (No.2)* (n 505) [20].

⁵¹⁵ *R v Highbury Corner Magistrates, ex parte Watkins* [1992] 10 WLUK 121

⁵¹⁶ *ibid.*

⁵¹⁷ *Benham (No.2)* (n 505) [56].

⁵¹⁸ *Ibid.*

⁵¹⁹ *Martin* (n 501).

committal are entertaining a criminal process.’

In assessing Mr Benham’s case, the judges rightly took a holistic view of committal in this context, drawing attention to fundamental aspects of the process which are characteristic of the criminal law. They looked past its initial appearance, or the garments of the civil law in which it had been dressed by the defence, to the realities of the process.

PURPOSE OF COMMITTAL

Given that criminal and civil law traditionally have different aims it is understandable that the purpose of imprisonment for council tax has been confused by its hybrid legal status. It is worth noting at this point that, for criminal offences in England and Wales, the purpose of imprisonment is defined by Section 57 of the Sentencing Act 2020; under this section, courts must have regard to the punishment of offenders, the reduction of crime (including reduction by deterrence), the reform and rehabilitation of offenders, the protection of the public and the making of reparation by offenders to persons affected by their offences. In this section I will draw upon case law examples to argue that, as well as the difficulties committal presents in terms of its legal nature, the objective or purpose of the option to commit debtors to prison was inconsistent. I will demonstrate that judges switched at their convenience between justifying committal as a process of coercion, punishment and deterrence, all of which are flawed when applied to an individual who has no means to pay their debts but are perceived as having wider benefits for the efficiency of the whole council tax system.

Coercion has been defined as ‘use of a certain kind of power for the purpose of gaining advantages over others (including self-protection), punishing non-compliance with demands, and imposing one’s will on the will of other agents.’⁵²⁰ Using the

⁵²⁰ For further discussion of the history of coercion as a concept, see: Scott Anderson, ‘Coercion’ in Edward N Zalta (ed), *The Stanford Encyclopedia of Philosophy* (Summer 2021, Metaphysics Research Lab, Stanford University 2021) <<https://plato.stanford.edu/archives/sum2021/entries/coercion/>> accessed 25 August 2022.

prospect of committal to coerce debtors into paying their arrears was the most cited purpose for the sanction within the case law analysed. The concept of coercion encompasses threat and intimidation in this context, a form of debt enforcement which operates *in terrorem*.⁵²¹ The idea of coercion is perhaps best summed up by the following passage in the case of *Johnson*⁵²²:

Their primary task in this situation was not to punish Mr Johnson for his failure to pay the amounts due but to try and extract the money as best they could. Immediate imprisonment is one method of achieving this if there is good reason to believe that the person concerned, firstly, does not like the idea of going to prison and, secondly, has the funds available.⁵²³

This suggests that coercion operates on the assumption that available funds combined with a dislike of the prospect of imprisonment will naturally result in payment of the arrears. In this statement it is distanced from punishment; coercion is situated as a proactive process in contrast to the reactive nature of punishment. Throughout the cases, judges on appeal would frequently deny that there was any punitive motivation to the sanction, and that its sole motivation was to encourage debtors to pay their arrears to avoid the real possibility of being imprisoned. For example, in the cases of *Deary*⁵²⁴ and *Aldous*⁵²⁵, which concerned arrears of community charge and council tax respectively, the judges summarised the objective of the court as follows:

this court has now repeatedly made clear that the purpose of the powers of the court under reg 41 [Regulation 41, Council Tax (Administration and Enforcement) Regulations 1992] are not powers of punishment for past misdeeds, but powers to ensure future payment of past liabilities.⁵²⁶

⁵²¹ Gerry R Rubin, 'Law, Poverty and Imprisonment for Debt, 1869-1914', *Law, Economy & Society: Essays in the history of English Law 1750-1914* (Professional Books Limited 1984), 250.

⁵²² *R v Hull Justices, ex parte Johnson* [1994] 94 EWHC 694 (QB).

⁵²³ *Ibid* [3].

⁵²⁴ *R v Leicester Justices, ex parte Deary* [1994] 93 EWHC 3154 (QB).

⁵²⁵ *Aldous* (n 499).

⁵²⁶ *Deary* (n 527) [6].

the authorities are also unanimous that the purpose of imprisonment under reg.47 [Regulation 47, Council Tax (Administration and Enforcement) Regulations 1992] is coercive. The purpose is to persuade a person who would be able to pay to make the payment, rather than continuing to wilfully refuse or culpably neglect payment.⁵²⁷

During his initial committal hearing, Mr Deary gave details of his low wage which had not improved for many years. He was married with a young family, and his wife did not have an income. He gave evidence that he had no savings whatsoever and his expenditure regularly exceeded his income. Despite these circumstances and an offer to pay off his arrears at a rate of £10 per month, the magistrates concluded that his was a bad case of culpable neglect and that his conduct was indicative of his indifference to payment.⁵²⁸ Although he did have an income from employment, the court disregarded the option of attachment of earnings because this had failed in the past and it would have taken him five years to repay his arrears. His conduct was described as 'inexcusable'⁵²⁹ and he was imprisoned for a period of twenty-eight days.⁵³⁰

On appeal, the judges discussed the underlying purpose of committal. Mr Deary's appeal was not built around a minor procedural fault but raised questions about the fundamental objective of the sanction. The court reflected on the cost of his imprisonment, which at that time was estimated to be £375 per week, as well as the additional costs his dependents would suffer and the fact that his arrears would be remitted on committal.⁵³¹ Their key criticism of the decision to commit which led it to be overturned was related to the validity of the coercive purpose. The judges felt that 'there was no evidence of any kind before the justices which could have led them to suppose that the making of the committal order would have been followed by a

⁵²⁷ *Aldous* (n 499) [14].

⁵²⁸ *Deary* (n 527) [3].

⁵²⁹ *Ibid.*

⁵³⁰ *Ibid* [5].

⁵³¹ *Ibid* [4].

payment of this large debt'.⁵³²

Because there was no reason to believe in the coercive function of committal in this case, they concluded that the judges at first instance had taken a punitive approach.⁵³³ They strengthened this point by commenting that, had Mr Deary had the funds to pay his arrears, his would have been something of an ideal case for the coercive function of committal:

On the facts of the present case, the threat of imprisonment might have been even more potent with this particular applicant, bearing in mind that he now had the responsibility of a wife and child, who would be very seriously prejudiced if he were committed to prison.⁵³⁴

In other words, Mr Deary would have had many good reasons to pay his arrears to avoid imprisonment, if he was able. The reality of the case was that he was not. This begs the question of what the motivation of the court was; there was no evidence that coercion was likely to be effective in Mr Deary's circumstances, suggesting a punitive approach or a wider deterrent effect on others in arrears.

The same can be said of the case of *Aldous*⁵³⁵, in which a woman with two young children was committed for the ninety day maximum. One of Ms Aldous' children was described as 'a person with a number of disadvantages'⁵³⁶ which complicated the possibility of wider family members caring for them during their mother's imprisonment. The coercive function breaks down when the debtor cannot pay, and the circumstances of the debtor with dependant family members would suggest they have a great deal to risk in choosing not to pay, indicating that their agency is diminished by their financial situation. As with Mr Deary, the potential impact of the removal of Ms Aldous from her household should have alerted the judges to the severity of her financial circumstances. This underlines the flaw of the coercive

⁵³² *ibid* [5].

⁵³³ *ibid* [5].

⁵³⁴ *Ibid* [5].

⁵³⁵ *Aldous* (n 499).

⁵³⁶ *Aldous* (n 499) [15].

function; it is ineffective against those who genuinely cannot pay and creates the risk that the punitive sanction of committal will only be imposed against those who are unable to avoid it.

The fact that individuals such as Mr Deary and Ms Aldous were imprisoned despite considerable evidence to suggest that this was inappropriate and would be ineffective raises the question of whether coercion necessitates some level of punishment, to strengthen its credibility and send a wider message of deterrence. This was suggested in the reasoning of the *Ireland*⁵³⁷ case, where it was asserted that in some situations, courts should resort to punitive measures, because if ‘the coercive regime is seen to ‘have no teeth’, then it will soon lose any coercive force’⁵³⁸. In this statement, coercion and punishment are inextricably linked and reliant on each other; attempts to coerce by threat of an unpleasant sanction are pointless unless the individual threatened believes that the court has been known to follow through on such threats. The emphasis on how the sanction is seen widens the impact to not just the debtor in question, but society as a whole. They go on to state that, ‘when, in the view of the Justices, coercion has been properly tried and has failed, imprisonment is the last resort, but a last resort that is within the Magistrates’ discretion to impose, where they judge that coercion has failed.’⁵³⁹ If coercion has failed in the case in hand, the objective of committal switches to making an example of the debtor, to be witnessed by the wider public. We can see from these cases that the decisions made at first instance were not always wholly about the individual in front of the judge; the wider impact of their decision could be just as important.

The judges in *Ireland* refer to comments made in the case of *Herridge*⁵⁴⁰, that a system that did not give judges the discretion to imprison would be ‘totally emasculated’⁵⁴¹. This is despite the open acknowledgment in the *Herridge* case that

⁵³⁷ *R v Cannock Justices, ex parte Ireland* [1995] 11 WLUK 313

⁵³⁸ *Ireland* (n 540) [4].

⁵³⁹ *Ibid.*

⁵⁴⁰ *R v Felixstowe, Ipswich and Woodbridge Magistrates’ Court, ex parte Herridge* [1993] 1 WLUK 282.

⁵⁴¹ *Herridge* (n 543) [93].

the consequences of committal run counter to the overall aim of the local authority who sought it: 'The justices would have had to bear in mind that if they commit the debtor to prison, the debt is eradicated and the predominant purpose of obtaining payment will be frustrated.'⁵⁴² This evidences the importance given to indirect objectives in the process of committal; the specific facts of the case are secondary to wider concerns of the system as a whole. It also demonstrates the strength of belief in committal, whichever objective is in play, given that it extinguishes any option to recover the amount outstanding.

The case of *Meikleham*⁵⁴³ contains explicit reference to the deterrent function of committal. As discussed in Chapter One, council tax is influenced by its predecessor, the community charge, which many refused to pay on principle because of the way in which it was calculated. It was within the context of this growing backlash that Mr Meikleham had the poor fortune to have fallen into arrears of the community charge. The case record indicates that he was unemployed and relied financially upon his wife, who was in full-time employment but received a relatively low wage. During his hearing, Mr Meikleham made an offer to repay in instalments of £4 per week, but this was rejected, and he was imprisoned for forty-two days. The overwhelming reason given for this decision to commit was:

the knowledge that there was organised opposition to payment of the community charge in the Leeds District and that members of an anti-poll tax organisation regularly attend the enforcement courts in this city and give 'advice' to defendants.⁵⁴⁴

In light of this wider context, the magistrates concluded that 'a legitimate objective of effective enforcement must be to deter intentional default by community charge payers'.⁵⁴⁵ Here, they make explicit the indirect objective of their decision to commit Mr Meikleham, for whom there was no evidence to suggest that failure to pay

⁵⁴² Ibid.

⁵⁴³ *R v Leeds Justices, ex parte Meikleham* [1994] 92 EWHC 2965 (QB).

⁵⁴⁴ *Meikleham* (n 546) [2].

⁵⁴⁵ Ibid.

community charge was caused by anything other than difficult financial circumstances. He was not imprisoned because it was thought this would coerce him into making payment, or even as a form of punishment, but to send a message to others that the threat of committal was genuine, in the hope that this may deter others from refusing to pay. We can therefore see how the tendency towards deterrence is informed by the recent history of local taxation in England and Wales.

As well as having an unclear legal status, the objective of committal is inconsistent. This creates something of a lottery for those who faced with the prospect of a committal hearing, making the process more difficult to navigate or prepare for. The risk that this uncertainty creates will be explored further in the following sections, which demonstrate how little was known about the history or circumstances of debtors at committal hearing stage, and how few safeguards were available to them.

RULES OF EVIDENCE

As stated in Chapter One, Regulation 47(2) of the Council Tax (Administration and Enforcement) Regulations 1992 requires that:

- (2) The court shall (in the debtor's presence) inquire as to his means and inquire whether the failure to pay which has led to the application is due to his wilful refusal or culpable neglect.
- (3) If (and only if) the court is of the opinion that his failure is due to his wilful refusal or culpable neglect it may if it thinks fit –
 - (a) issue a warrant of commitment against the debtor, or
 - (b) fix a term of imprisonment and postpone the issue of the warrant until such time and on such conditions (if any) as the court thinks just.

The first issue in the substance of the regulations is the lack of a clear relationship between the means assessment and the assessment of conduct. Because of the sentence order, one could conclude that there is importance in the ordering of the

concepts. Means should be the first concern, the outcome of which will decide whether conduct needs to be assessed. If, following a means assessment, the individual is found to have no money currently available to them to address their arrears, it is difficult to see how they could be assessed as having refused or neglected to pay, but this only applies to their circumstances on the day of the hearing. Many of the cases reviewed contain consideration of the history of the arrears as relevant to an assessment of the debtor's conduct.

In the case of *Wandless*⁵⁴⁶ it was concluded that:

Even if a finding of wilfulness has been made so as to give rise to the power to commit, a proper inquiry as to current means must be conducted before that power can be properly exercised so as to ensure that it is not being used simply to punish...the inability to pay is no reason to make a committal order...If a debtor currently has no means and no real prospects of obtaining any, custody can only punish.⁵⁴⁷

This suggests that conduct should be the first consideration, after which means should be assessed, and that if the debtor is shown to have no way of paying the arrears, the assessment of their conduct becomes irrelevant. It could be argued, therefore, that there is no need to assess the conduct of the debtor, if this assessment will be overridden by the ultimate consideration of whether they can pay their arrears. The relationship between the means and conduct tests is unclear, as well as the time period they relate to. This creates a substantial barrier to understanding for the debtor facing such proceedings, as they are not able to predict with any certainty how they will be assessed or what evidence will be given most weight, compromising their right to a fair and public hearing under Article 6.⁵⁴⁸ This also relates to the purpose of committal, considered above; if past conduct is relevant, this undermines that the objective of the committal is to persuade the

⁵⁴⁶ *Wandless* (n 503).

⁵⁴⁷ *Wandless* (n 503) [28].

⁵⁴⁸ European Convention on Human Rights.

debtor to pay.

Secondly, the use of the conjunction 'or' between the two concepts of wilful refusal and culpable neglect in the regulation suggest that they are mutually exclusive and cannot both be true in one given situation. This would suggest that the legislature had in mind that there are two distinct kinds of conduct which should warrant the use of committal. Bailey asserts that, 'once the justices have so decided, they must state which has been found and their reasons for doing so, citing the authority of *Clark*⁵⁴⁹. However, this distinction is not always drawn or justified. The case of *Wandless* is also an example of the two concepts being conflated, and a failure to particularise the reasons for the finding on conduct. In quashing the original decision to imprison Mr Wandless, the judge stated that there had been 'a total failure...properly to enquire into the Claimant's means...before making a finding of wilful neglect...there appears simply to have been a global finding of wilful neglect without any particularisation.'⁵⁵⁰ Here the judge merges the wording of the two concepts, despite the fact that such a concept of 'wilful neglect' would appear to be somewhat of a contradiction in terms. It is not clear whether this is the appeal judge's error or whether it originates from the first hearing, but either way, it casts doubt over the extent to which the judges sufficiently applied their minds to the concepts of wilful refusal and culpable neglect.

Given that most individuals who have the means to pay are likely to address their arrears before reaching the committal stage, it seems unlikely that many debtors who reach the committal hearing would fall within the definition of wilful refusal. This shifts emphasis onto the concept of culpable neglect, which is given no definition under the regulations. Taking its plain meaning, it seems to refer to a failure to take reasonable action. However, this makes an assumption that there is a commonly accepted or consensus view of the level of effort an individual must put in to addressing their debts. This permits judges to make normative judgments about the circumstances of

⁵⁴⁹ SH Bailey, *Cross on Local Government Law* (9th edn, Sweet & Maxwell 2022); *R v Northavon Magistrates, ex parte Clark* [1994] EWHC 1841 (QBD).

⁵⁵⁰ *Wandless* (n 503).

debtors faced with committal, which introduces considerable discretion and could lead to inconsistency in the application of the regulations. For example, in the aforementioned case of *Benham*⁵⁵¹, before it reached the European Court of Human Rights, Mr Benham sought judicial review of the original decision to commit him to prison. During his committal hearing, conduct relevant to culpable neglect included consideration of his efforts to obtain employment. The judges at first instance formed the view that Mr Benham had the potential as an individual to earn money and subsequently discharge his obligation to pay council tax but had failed to do so, amounting to evidence of culpable neglect justifying committal. This raises the question of where the threshold lies for an expectation of employment to pay debts. On appeal, the decision to commit Mr Benham was quashed on the basis of the definition the first instance judges gave to culpable neglect in relation to employment. However, the appeal judges did not exclude considerations of accessing employment from the scope of relevant factors in assessing culpable neglect; instead, they took issue with the evidential basis of the original decision, stating that:

before such a finding could be sustained, at the very least there would have to be clear evidence that gainful employment, for which he was fit, was on offer to the debtor and that he had rejected or refused that offer.⁵⁵²

They therefore concluded that efforts to gain employment are relevant, posing the question of how far judges can extend their inquiry into the debtor's conduct, and where to draw the distinction between neglect that should be deemed culpable, or not. This introduces further uncertainty for the debtor and opens them up to normative judgements about their lifestyle choices, levels of productivity and engagement in society. Further comments of this nature can be found in the *Benham (No. 1)* judgment in relation to his choice of occupation as a self-employed writer, and the fact that he had a car for which he paid for tax and insurance. We can see how circumstances are framed as proof of wrongdoing, a conflation of structure and

⁵⁵¹ *R v Poole Magistrates, ex parte Benham; Benham v Poole Borough Council* [1991] 156 JP 177 (QBD).

⁵⁵² *Benham (No. 1)* (n 554) [6].

agency.

We can therefore see that the concepts of wilful refusal and culpable neglect have caused problems for judges in applying the regulations, this application being a common reason for subsequent quashing of the committal order. There are problems in terms of the level of justification given and also the scope of their definition, as well as a fundamental uncertainty about how these conduct tests relate to the means assessment required by the regulations. The cases of *Meikleham*⁵⁵³, *Wilson*⁵⁵⁴, *Deary*⁵⁵⁵, *Wandless*⁵⁵⁶ and *Swaffer*⁵⁵⁷ also demonstrate that debtors who make offers to repay their arrears by instalments during the hearing have still been imprisoned, despite the fact that this would directly undermine any accusation of wilful refusal or culpable neglect to pay. This was particularly problematic in the case of *Wandless*, an individual who had been seriously injured in an industrial accident some years ago and lived on 'incapacity benefits', as they were known at the time, whose offer to repay by instalments was rejected and was imprisoned for the maximum ninety days. This highlights the lack of definition of the legal meaning of wilful refusal and culpable neglect, and also undermines the coercive function of committal.

PROCEDURAL SAFEGUARDS

So far, we have seen the issues of definition and interpretation associated with committal for council tax arrears. These problems have the potential to make the hearing significantly more difficult for the debtor to navigate. With this in mind, one would expect that such a debtor would reasonably be able to rely upon certain rights and protections, to ensure the fairness of proceedings. In the following section I will give examples of three fundamental safeguards which, because of the uncertain or unique nature of the proceedings, have been denied or weakened for debtors facing

⁵⁵³ *Meikleham* (n 546).

⁵⁵⁴ *R v Leicester Justices, ex parte Wilson* [1993] 93 EWHC 3343 (QBD).

⁵⁵⁵ *Deary* (n 527).

⁵⁵⁶ *Wandless* (n 503).

⁵⁵⁷ *R v Cannock Justices, ex parte Swaffer* [1997] 96 EWHC 936 (QBD).

committal, building on the work of Epstein.⁵⁵⁸ The combination of inconsistent definition and interpretation of the law with inadequate procedural safeguards operated to make committal for council tax arrears a 'stealth sanction', shielded by the pretence of being a civil process.⁵⁵⁹ The key procedural safeguards I will consider are; the right to appeal, the right to legal representation and proportionality of sanctions.

Hearing safeguards are protected in law by Article 6 of the Human Rights Act 1998, which protects the individual right to a fair and public hearing. Such a hearing must, generally, be held within a reasonable time, be heard by an independent and impartial decision-maker, provide the accused with all the relevant information, be open to the public and publicly reported (unless exclusions apply) and allow representation or a language interpreter if required.⁵⁶⁰ I have chosen to consider appeals, legal representation and proportionality because they represent key reference points for the fairness of court proceedings, allowing debtors to challenge decisions, engage meaningfully with the court process and appreciate the potential severity of any repercussions they face.

APPEALS

All of the cases considered in this chapter are examples of appeals by way of judicial review. The legal system provides for routes of appeal against the decision of a judge, often at several different levels, as an opportunity to ensure the accountability of judges. Appeals provide a private function in terms of accountability to the individual litigant who brought the appeal, and a public function that enables errors to

⁵⁵⁸ Epstein, 'Punished for Being Poor' (n 257); Epstein and Wise, 'Poll Tax Committals and the European Court' (n 257); Epstein, 'Imprisonment for Debt: The Courts and the Poll Tax' (n 257); Epstein, 'Imprisonment for Debt - an Update' (n 257); Epstein and Wise, 'Imprisonment for Debt' (n 257); Epstein, 'Sentencing in Council Tax Defaults' (n 257); Epstein, 'Mothers in Prison: The Sentencing of Mothers and the Rights of the Child' (n 257); Epstein, 'Imprisonment for Council Tax Default' (n 257); Epstein, 'Punishing the Poor: The Scandal of Imprisonment for Council Tax Debt' (n 257); Baldwin and Epstein (n 257); Epstein and Genen (n 257).

⁵⁵⁹ White (n 429) 616.

⁵⁶⁰ <https://www.equalityhumanrights.com/en/human-rights-act/article-6-right-fair-trial> [Accessed 29 October 2019].

be corrected, bolstering citizen confidence in the courts and the wider legal system. Such safeguards foster legitimacy in legal processes and reduce the risk of miscarriages of justice such as false imprisonment, which may have life-altering consequences for those involved.

Given the large number of issues highlighted above in the application of regulation 47 CT(AE)R 1992, a clear and accessible route of appeal against the decision to commit is crucial. However, this is another area where the lack of a clear definition underpinning the sanction has left debtors at a disadvantage. According to the wording of the statute, the only way for the imprisoned debtor to be released from prison before the end of their sentence is to repay the arrears outstanding, as stated in regulation 47(7)⁵⁶¹:

The order in the warrant shall be that the debtor be imprisoned for a time specified in the warrant which shall not exceed 3 months, unless the amount stated in the warrant is sooner paid;

Subsections of regulation 47(7) go on to deal with part-payment of the arrears, in which case the length of the sentence will be reduced in proportion to the amount paid. The legislation does not provide for any form of appeal against the decision of the magistrate to commit them, only an option to be freed from prison if they pay the arrears.

Once committed, the debtor's only option was to appeal by way of judicial review in order to secure bail. This is highlighted in comments by Lord Justice Nolan in the case of *Benham (No. 1)*:

Judicial review is, in general, reserved for cases where the legislature has provided no adequate alternative remedy...A serious difficulty arises in a case such as the present where the magistrates have committed the appellant to prison and have refused bail. If these were criminal proceedings, the appellant

⁵⁶¹ CT(AE)R 1992.

could apply to the High Court for bail as soon as the application for a stated case had been made. Since they are civil proceedings, he has no such right until the case has been stated and lodged with the High Court. That (and that alone) is the reason why the application for judicial review was made on counsel for the appellant's advice. It was made so as to create an immediate substantive High Court proceeding to which an application for bail could be attached. An inquiry into the best means of avoiding it in future cases is called for, and we shall ask for it to be carried out as a matter of urgency.⁵⁶²

Here we can see that the limited options for appeal against imprisonment for council tax arrears stems directly from its classification as civil law proceedings. This request for reform to the lack of appeal options was not acted upon, evidenced by the later cases in which imprisoned debtors were still forced to seek judicial review, including the 2017 case of *Woolcock (No. 1)*⁵⁶³. This lack of options to seek oversight of the decision to commit is symptomatic of the anomalous status of committal in this context, and again places the debtor at significant disadvantage.

LEGAL REPRESENTATION

Legal representation is provided without cost in certain situations to enable individuals to engage with the legal process and protect their own rights. Crucially in committal hearings, the debtor will be primarily concerned with safeguarding their liberty.

However, based on the reports available, in the twenty-three cases considered in this analysis it can only be confirmed that three debtors received legal representation at their initial committal hearings.⁵⁶⁴ Of these three, in the case of *Swaffer*⁵⁶⁵, representation was only available because the debtor was also subject to criminal

⁵⁶² *Benham (No. 1)* (n 554) [7].

⁵⁶³ *R (on the application of Woolcock) v Bridgend Magistrates' Court* [2017] EWHC 34 (Admin).

⁵⁶⁴ *Swaffer* (n 560); *Woolcock (No. 1)* (n 566).

⁵⁶⁵ *Swaffer* (n 560).

proceedings on the same day⁵⁶⁶, and in *Ireland*⁵⁶⁷ it is unclear whether the legal representation extended past correspondence to include attendance at the hearing.⁵⁶⁸ In eight cases it was specified that the debtor was unrepresented,⁵⁶⁹ and in the remaining cases it is unclear whether there was legal representation.⁵⁷⁰ Included within the unrepresented count are the group actions of *Beet*⁵⁷¹ and *Perks*⁵⁷², which concerned appeals on behalf of thirteen individuals who were unrepresented during their initial committal hearings. It is therefore fair to say that in the recent history of committal hearings, legally represented debtors were not the norm, casting doubt on the quality of their engagement in these processes and the legitimacy of their outcomes.

As discussed previously, the legal test in committal hearings is unclear and inconsistently applied, and there is often discord between what the debtor perceives as helpful to his case and how the magistrate views their conduct. The unrepresented debtor is opened up to considerable difficulties which may prejudice their right to a fair trial protected under Article 6.

The first alleged violations of these provisions by the United Kingdom as a respondent State were considered by the European Court of Human Rights in the aforementioned case of *Benham*.⁵⁷³ At the time of Mr Benham's original committal the only opportunities available to him for legal representation were the 'Green Form' scheme which provided for at least two hours of advice and assistance from a solicitor (excluding representation at a hearing),⁵⁷⁴ or the Assistance by Way of

⁵⁶⁶ *Ibid* [2].

⁵⁶⁷ *Ireland* (n 540).

⁵⁶⁸ *Ireland* (n 540).

⁵⁶⁹ *Beet v United Kingdom* (2005) 41 EHRR 23; *Perks and others v United Kingdom* [1999] 94 ECHR. 25277; *Benham (No.1)* (n 554); *Wandless* (n 503); *Ursell* (n 497); *R v Highbury Corner Magistrates' Court, ex parte Uchendu* [1994] 158 EWHC 409 (QB); *Deary* (n 527); *R v Wolverhampton Magistrates Court, ex parte Mould* [1992] 11 WLUK 49.

⁵⁷⁰ *R v Alfreton Justices, ex parte Gratton* [1993] 11 WLUK 321 (QBD); *Aldous* (n 499); *R v Birmingham Justices, ex parte Mansell* [1988] 1 WLUK 354; *Herridge* (n 543); *Johnson* (n 525); *Meikleham* (n 546); *Wilson* (n 557); *Broadhurst* (n 573); *R v Mid-Hertfordshire Justices ex parte Cox* [1995] 160 JP 507.

⁵⁷¹ *Beet* (n 572).

⁵⁷² *Perks* (n 572).

⁵⁷³ *Benham (No.2)* (n 505).

⁵⁷⁴ *Ibid* [11].

Representation Scheme, known as ABWOR, introduced by The Legal Advice and Assistance (Scope) Regulations 1989.⁵⁷⁵ The latter scheme was dependent on magistrates to trigger its use in prescribed circumstances. Full legal aid was not available, and he asserted that this constituted a violation of Article 6(3). Mr Benham asserted that the two available schemes of assistance were ‘wholly inadequate’⁵⁷⁶ and that the lay magistrates who dealt with committal hearings were required to interpret complex regulations despite having no legal training.⁵⁷⁷ This raises an interesting new dimension to the right to be legally represented; not only does the fulfilment of this right enable the client to engage in the process but it provides a further safeguard on perverse decisions by judges who may be reminded of their duties or responsibilities by counsel prior to reaching them, mitigating the need for subsequent appeals. Mr Benham alleged that ‘if he had been legally represented the magistrates might have been brought to appreciate the error that they were about to make.’⁵⁷⁸ In consideration of his application the court concluded that:

In view of the severity of the penalty risked by Mr Benham and the complexity of the applicable law, the Court considers that the interests of justice demanded that, in order to receive a fair hearing, Mr Benham ought to have benefited from free legal representation during the proceedings before the magistrates. In conclusion, there has been a violation of art 6(1) and 3(c) of the Convention taken together.⁵⁷⁹

This decision was followed in two subsequent joint actions, *Perks*⁵⁸⁰ and *Beet*⁵⁸¹. In all three cases the findings in favour of the applicants were followed by applications for just satisfaction under Article 50⁵⁸² in the form of compensation for non-pecuniary losses. The applicants claimed that there was a causal link between the lack of free legal representation and their imprisonment. In both *Benham (No.2)* and *Beet*,

⁵⁷⁵ Ibid.

⁵⁷⁶ Ibid [57].

⁵⁷⁷ *Benham (No.2)* (n 505) [57].

⁵⁷⁸ Ibid.

⁵⁷⁹ Ibid [64].

⁵⁸⁰ *Perks* (n 572).

⁵⁸¹ *Beet* (n 572).

⁵⁸² Human Rights Act 1998.

despite acknowledging the significance of the Article 6 violation, the court declined to speculate as to what might have occurred had legal representation been provided because it could not identify special features in the cases amounting to ‘a real loss of opportunity.’⁵⁸³

The same approach was taken to the majority of the applicants in the case of *Perks*, save for the lead applicant, Mr Perks, who was awarded compensation of £5,500⁵⁸⁴. Mr Perks lived with complex physical and mental disabilities as a result of childhood meningitis⁵⁸⁵ and during the course of two hearings which considered committal, he had referred to a recent hospital visit but this was not investigated any further.⁵⁸⁶ On appeal against his subsequent committal, evidence was provided by both family members and a medical expert as to his limited capacity to deal with his own affairs. In his case:

the Government [as Respondents] conceded that the situation of Mr Perks was an exception... Mr Justice Hamson found that it was unlikely that the magistrates would have committed Mr Perks to prison if they had known more about his health problems and personal circumstances. The Government accepted that a reasonably competent solicitor would have drawn the magistrates’ attention to those circumstances.⁵⁸⁷

This case sets a high threshold for establishing a causal link between lack of representation and imprisonment to the satisfaction of the courts and serves as a clear warning of the risks inherent in this stage of debt enforcement for those who do not have the benefit of representation. The outcome of Mr Perks’ committal hearings could have been drastically different had he been able to discuss his circumstances with a legal professional and explain the history of his arrears. A lawyer, trained to assess client capacity and make appropriate provisions for support where they suspect any limitations, would have been able to effectively explain his

⁵⁸³ *Beet* (n 572)[48].

⁵⁸⁴ *Perks* (n 572) [81].

⁵⁸⁵ *ibid* [7].

⁵⁸⁶ *Ibid* [9].

⁵⁸⁷ *Perks* (n 572) [80].

circumstances and put forward a logical argument as to why the facts of the case did not fit the definitions of wilful refusal or culpable neglect. Instead, a matter which started in the hands of the local authority was escalated to the European Court of Human Rights, primarily because it was not considered necessary to provide adequate representation for Mr Perks.

The case of *Ursell*⁵⁸⁸ is a further example of the unacceptable risk caused by lack of legal representation. In this case, Ms Ursell's representative failed to attend her committal hearing, but she agreed to continue unrepresented when given the option to adjourn proceedings.⁵⁸⁹ During the hearing, the debtor approached the magistrates' clerk and tried to give him a letter from her doctor which described her state of health, which had been poor in recent years. In doing so, she stressed that the contents of the letter should not be shown to the representative of the local authority seeking her committal.⁵⁹⁰ Although it was acknowledged by the clerk that her anxiety around disclosing the letter to the other side was understandable as its contents were of a highly personal nature, she was informed that, in line with the rules of disclosure, the letter could not be admitted into evidence unless her opponent had had sight of it. She refused to allow the letter to be shared, and its contents were therefore not considered by the magistrate or the local authority before a decision was made. After failing to comply with the payment terms of a suspended committal order, the debtor was subsequently sentenced to thirty days' imprisonment. On appeal, Justice Schiemann summarised the issue of the doctor's letter as follows:

I entirely follow the applicant's reasons for not wishing to have the letter put into the public domain and it is a pity that at the appropriate time she was unrepresented. Had she been, I suspect she would have been advised to show the letter to the authority's representative and would have done so. The letter has been exhibited to an affidavit which has been served on the

⁵⁸⁸ *Ursell* (n 497).

⁵⁸⁹ *Ursell* [3].

⁵⁹⁰ *Ibid.*

respondents and so, in the end, precisely that has happened which the applicant was not prepared to see happen.⁵⁹¹

This judgment impacted Ms Ursell in two ways; the decision of whether to commit her was made in the absence of evidence of her medical state, something highly relevant to the assessment of her conduct which could have helped her to avoid imprisonment. Lack of advice and representation regarding rules of disclosure may have influenced the outcome of her hearing. Secondly, even though the doctor's letter was not admitted into evidence, the debtor still lost control of her personal information, which she was not aware would happen. With the benefit of advice Ms Ursell could have made an informed decision whether to put forward the document or retain it if she felt that protection of her personal information was of greater importance. These procedural rules of the court are not common knowledge and, as shown by this case, the unrepresented debtor can get into real difficulties without the full or correct information on which to base decisions.

Reflecting on these cases, the importance of the use of committal in the wider legal framework becomes clear. Incorrect applications of the law by magistrates have not only led to wrongful imprisonments but the lack of safeguards for the individual debtors involved have amounted to human rights violations. They provide clear demonstration of the issues which can occur as a result of a lack of legal representation.

The position with regards to legal representation has been clarified in the recent case of *Woolcock (No.2)* (discussed further in Chapter Six)⁵⁹², in which the following statement was made by Hickinbottom LJ:

At the hearing for committal, the subject of the summons has the right to be legally represented. Usually, he will be represented by the duty solicitor. Magistrates should not proceed unless and until they have ascertained

⁵⁹¹ Ibid.

⁵⁹² *R (on the application of Woolcock) v Secretary of State for Communities and Local Government and others* [2018] EWHC 17 (Admin).

whether the subject wishes to be represented; and, if he does, that his representative has had a proper opportunity to take the subject's instructions and give him advice before the hearing commences.⁵⁹³

Given that the sanction was removed as an option in Wales shortly after the conclusion of this case, the clarification is welcome but had almost no impact. However, the failure to protect debtor rights in the recent history of council tax enforcement is indicative of wider trends in the treatment of the indebted individual which may influence any legal provisions which replace it. It also indicates the level of vulnerability common in debtors who have faced imprisonment, something which should place them at the centre of wider discussions of access to justice and legal representation.⁵⁹⁴

PROPORTIONALITY

In this section we will consider what protections there are for debtors in terms of limiting the length of their imprisonment if a decision to commit is made.

Debtors are protected to some extent by regulation 47(7) CT(AE)R 1992 which states that the term of imprisonment stated in the warrant of committal should not exceed three months. This provides protection for the debtor in that their imprisonment cannot be indefinite, with a clearly stated maximum length. The wording suggests that three months imprisonment is a maximum term rather than an automatic sentence, leaving room for magistrates to issue a warrant for a period of less than three months. This maximum length has been consistent in the history of imprisonment for debt; as noted in the case of *Smith*⁵⁹⁵, the Poor Relief Act of 1601 contained no time limit on imprisonment but was subsequently amended in 1849 to

⁵⁹³ *Woolcock (No.2)* (n 595) [7].

⁵⁹⁴ For evidence of the impact of cuts to civil legal aid on access to justice in England and Wales, see: [Daniel Newman, Jess Mant and Faith Gordon, 'Vulnerability, Legal Need and Technology in England and Wales' \(2021\) 21 International Journal of Discrimination and the Law 230](#); Catrina Denvir and others, 'We Are Legal Aid: Findings from the 2021 Legal Aid Census' (Cardiff University; University of Glasgow; Monash University; Monash Business School 2021).

⁵⁹⁵ *Re SJ Smith (A Bankrupt), ex parte Braintree District Council* [1990] 1 AC 215.

the three-month upper limit.⁵⁹⁶

Despite the protection of a maximum sentence, the regulations go no further in specifying what factors may influence the length of the imprisonment term, or how judges should go about deciding on a length of sentence. It cannot be said from interpreting the regulations alone what would justify a severe or more lenient legal sanction. This can be contrasted with the criminal law, where judges must have regard to the five purposes of sentencing⁵⁹⁷, and take into account factors such as seriousness, level of harm, level of blame, previous record and personal circumstances before deciding on an appropriate sentence. This means that debtors who face a committal hearing cannot predict what length of sentence, if any, they may receive.

This gap in the regulations has left room for judicial interpretation. Perhaps unsurprisingly given the hybrid nature of the sanction of committal, it will be shown in the following sections that magistrates have adopted legal concepts from criminal law, such as proportionality, in deciding the appropriate length of imprisonment.⁵⁹⁸ This is a fundamental and well-established consideration in criminal sentencing, that the punishment should correspond in degree and kind to the offence. Perhaps because of this connection with the criminal law, magistrates have been resistant to spelling out the relevance of proportionality in the context of committal for debt, leaving unsatisfactory uncertainty for the debtor.

The case of *Uchendu*, which concerned non-domestic rates, dealt with the issue of proportionality and is analogous to committal for council tax arrears. Mr Uchendu owed more than £2,000, had failed to comply with the repayment arrangement for a suspended committal order, and the local authority put forward evidence from previous attempts at enforcement that he had lied about his identity and showed no interest in paying his arrears. His was identified as a particularly bad case, and

⁵⁹⁶ *Smith* (n 598) [231].

⁵⁹⁷ Criminal Justice Act 2003, s 142.

⁵⁹⁸ The Financial Conduct Authority Handbook contains a rule which prohibits firms from taking disproportionate action against a customer in arrears or default (R.7.3.14).

following a finding of culpable neglect, he was committed for the maximum period of ninety days.⁵⁹⁹ His initial committal order was quashed on appeal because of a finding by Mr Justice Laws that the means enquiry conducted by the magistrates had been inadequate and had involved no scrutiny of documents. The appeal judge agreed that, on the evidence available to the magistrates, they were entitled to find that Mr Uchendu's was quite a bad case, prompting significant discussion of the concept of proportionality. The relevance of proportionality suggests that there is a hierarchy of committal cases in this context which may attract different degrees of sanction. Mr Justice Laws described this idea of a correlation between the severity of the facts and the level of the sanction:

the magistrates' court...should be guided by a principle analogous to that well-known in relation to criminal punishment, namely that the maximum sentence or period prescribed by Parliament is, broadly speaking, to be reserved for the worst kind of case that can in practice be supposed to be likely to occur.⁶⁰⁰

The local authority put forward two reasons why proportionality was not a relevant consideration. Firstly, they relied upon the claim that the purpose of fixing a term of imprisonment was to 'influence the ratepayer's future conduct, that is to encourage him, by threat or deterrence, to pay up in the future.'⁶⁰¹ They distinguished this from the reasoning which they felt underpinned imprisonment for a crime, arguing that proportionality was not relevant because of the different purpose of imprisonment in these circumstances. Their second rebuttal of proportionality, although it seems in fact to go some way to supporting its relevance, was on the basis that it was inevitable that the larger the sum owed by the individual, the longer the term of imprisonment would be, because of the fact that serving a term of imprisonment served to 'extinguish the financial liability in question'.⁶⁰²

⁵⁹⁹ *Uchendu* (n 572) [2].

⁶⁰⁰ *ibid* [3].

⁶⁰¹ *Ibid*.

⁶⁰² *Ibid*.

A third defence was inferred from an affidavit of the chairman of the bench at the first instance hearing. He suggested that, in order to consider proportionality, the magistrates would have to be able to conceive of the worst possible case as a point of comparison:

While there may be worse cases it is impossible to say what the worst case might be and so impossible to say how we should arrive at a lesser alternative against this particular defendant on a rigid scale...having concluded in our judgment that 90 days was the correct alternative in all the circumstances of this case we found no grounds to reduce it and that was the figure we adopted.⁶⁰³

In response to the first point, it would seem that if the true purpose of committal here was to coerce payment, this would be more easily achieved by a mandatory sentence of three months, which would encourage most people to make payment to avoid a considerable period in prison. It would seem highly complicated to expect judges to decide upon a sentence that in each specific case would be just long enough to coerce payment, but not so long as to be excessive. As discussed above, if the true purpose of committal was coercion, then there would be no need to consider the debtor's conduct at all; proportionality becomes relevant only because of this emphasis on conduct.

In terms of the second argument, this raises the possibility that a sentence would only be proportionate in this context if it related to the amount of money outstanding. This is to some extent supported by the regulations, which permit the debtor's sentence to be reduced if they make part-payment of their arrears in proportion to the amount paid. This is therefore the interpretation of proportionality which relates most closely to the regulatory wording. However, this would seem to prejudice debtors who live in properties with very high rates of council tax, who may be more likely to be given the maximum term of imprisonment as compared to another debtor living in a low value home that has not paid council tax for many years. This

⁶⁰³ Ibid.

interpretation would make the debtor's conduct irrelevant.

The third argument drawn from the comments of the chairman of the bench is perhaps the least convincing. To some extent one of the defining features of the common law is the development of definitions and tests to be applied to different legal concepts, evolving over time. Some of these tests, such as the 'reasonable man' in the law of tort or the 'officious bystander' in the law of contract, are highly nebulous and have very broad applications. It does not seem beyond the realms of possibility for magistrates to develop a fictional standard of debtor against which other cases could be compared in justifying the length of committal. By avoiding this opportunity to develop an applicable concept of the worst case for this context, the magistrates simply underline the lack of justification and arbitrary nature of Mr Uchendu's maximum sentence and undermine the rights of debtors to receive a sanction which is commensurate with the circumstances of their case.

Mr Justice Laws confirmed that he did see a difference between Mr Uchendu's case and actual criminal punishment but that this did not exclude proportionality from the list of relevant considerations in making an order of committal. He summarised:

quite clearly, the more serious the case, whether in terms of the amount outstanding or in terms of the degree of culpability or blame to be attached to the ratepayer for his non-payment, the closer will any period imposed approach to the maximum. The principle of proportionality is as important to the court to consider in such a case as it is in a case of punishment properly so called.⁶⁰⁴

This decision was followed in *Aldous*⁶⁰⁵ and in the most recent case of *Woolcock (No.2)*⁶⁰⁶, Mr Justice Hickinbottom made a clear statement that:

⁶⁰⁴ *Uchendu* (n 572) [3].

⁶⁰⁵ *Aldous* (n 499).

⁶⁰⁶ *Woolcock (No.2)* (n 595).

even where the magistrates are satisfied that the failure to pay is the result of wilful refusal or culpable neglect, they will need to consider the degree of culpability, as that will be a factor that may be relevant to (e.g.) the period of imprisonment imposed.⁶⁰⁷

This line of authority therefore confirms that proportionality should be a feature in the decision-making process of magistrates when making orders of committal, but there remains no clear guidance on what factors should be used as a guide.

From the above analysis it can be seen that the application of the option to seek committal of a debtor under regulation 47 CT(AE)R 1992 suffered from fundamental uncertainty in terms of its defining characteristics. It is an example of a hybrid of criminal and civil law which has a knock-on effect on how judges interpret its purpose. The majority see it as a tool for coercion, ignoring the possibility that some who are imprisoned may have no choice in the matter, and ultimately will see their debts written off as a result of their incarceration. There has been explicit acknowledgment in the case law of the requirement for a punitive function to bolster the credibility of threats of imprisonment, which is interconnected with the belief that imprisonment serves a crucial deterrent function for the solvent and insolvent taxpayer alike, before they may reach this extreme stage of the enforcement process. Many of these interpretations are informed by the recent history of the community charge, the resistance to which threatened to undermine the fragile system of local taxation by consent.

These definitional problems feed into practical limitations on the protection of debtors' rights, including unacceptable limitations on their options for appeal and restrictions on the right to be legally represented which were shown to amount to a breach of human rights. Debtors are not able to predict or understand the relationship between their conduct and the length of sentence they are likely to receive (beyond knowing the maximum tariff), as criminal defendants would be able to if facing imprisonment, and judges are reluctant to provide any justification or

⁶⁰⁷ *Woolcock (No.2)* [17].

particularisation of the sentences they impose. This created a legal environment for debtors, many of whom were vulnerable, that was extremely challenging to navigate. Although all of the committals were quashed in the cases considered in this chapter, the debtors concerned still had to deal with the repercussions of imprisonment for themselves and their families, with no resolution of the arrears for the benefit of the local authority who sought committal.

In the next chapter we will consider the landmark case of *Woolcock (No.2)*, which highlighted some of the fundamental issues in the committal process and the number of cases of wrongful imprisonment. This will lead to discussion of the decision to consult on the continued use of committal for council tax in Wales, and what the responses to that consultation tell us about why committal was used.

CHAPTER SIX – WOOLCOCK AND THE PUBLIC CONSULTATION

WOOLCOCK

In the last chapter we saw how committal for council tax arrears was defined through analysis of case law, and how its hybrid status as a punitive civil sanction compromised the procedural protections available to debtors. The focus of this chapter will be the events which led to the removal of committal as an enforcement method for council tax arrears in Wales from April 2019. Qualitative analysis will be applied to two key sources: the 2018 case of *Woolcock (No. 2)*⁶⁰⁸ and responses to the Welsh Government public consultation on the removal of committal. These are rich sources of recent evidence of the reasons why committal was removed in Wales, but also tell us about the justifications for the use of committal in Wales until 2019. This chapter acts as a bridge between the historical use of committal (evidenced through case law) in Chapter Five and the reflections of local authorities after it was removed in Wales, in Chapter Seven.

BACKGROUND

Woolcock (No. 2), referred to in the last chapter, was a landmark case in the history of the use of committal for council tax arrears in Wales. Although this judicial review was unsuccessful, it brought to light data which demonstrated the scale of fundamental procedural and substantive errors in the application of the law in this area which, I argue, could not be ignored by the Welsh Government. Its reasoning is perhaps the best example of how committal was justified, even where it had been misapplied to the extent of numerous unlawful imprisonments, because it was seen as a crucial part of an effective and efficient enforcement system for council tax. In the justifications for imprisonment offered by the courts we can see the bias in favour of punitive sanctions and deterrence, and the prioritisation of the future effectiveness of the council tax system over the individual rights of debtors.

⁶⁰⁸ *Woolcock (No.2)* (n 595).

Ms Melanie Woolcock was a single mother from Bridgend who was committed to prison for eighty-one days for failure to pay council tax arrears totalling £4,741.75.⁶⁰⁹ After serving thirty-nine days of her sentence, she sought interim relief in the form of bail, which was granted⁶¹⁰. She made an application for judicial review of the suspended committal order issued by Bridgend Magistrates' Court on 20 October 2015 and the subsequent warrant of committal issued on 18 July 2016. After reviewing the limited records of the content of the two relevant hearings, Mr Justice Lewis concluded that both orders were unlawful⁶¹¹. He identified a failure of the magistrates to conduct an adequate means inquiry which meant that they could not draw conclusions about culpable neglect or apply their minds to the option of remitting some or all of Ms Woolcock's arrears. The period of her suspended order was also deemed to be excessive and disproportionate. Both orders were quashed.⁶¹²

As the grounds for review submitted in *Woolcock (No.2)* were different to her original appeal (*Woolcock (No.1)*), Ms Woolcock was permitted to pursue this additional judicial review. By contrast to her first appeal which challenged the individual decisions by Bridgend Magistrates' court to issue a suspended warrant and to commit her to prison, her second appeal was a systemic challenge to the system of imprisonment for council tax arrears on the basis that this system gave rise to an unacceptable risk of procedural unfairness. It was issued against several parties with responsibility for the system: the Secretary of State for Communities and Local Government, Welsh Ministers and the Secretary of State for Justice. The grounds for the review were summarised by Lord Justice Hickinbottom as follows:

Magistrates frequently failed to apply that clear and well-established law, notably by imposing a condition to a suspended committal order that required the payment of instalments over an unreasonably long period and making

⁶⁰⁹ *Woolcock (No.1)* (n 566) [8-10].

⁶¹⁰ *ibid* [18-21].

⁶¹¹ *Ibid* [36].

⁶¹² A full chronology of Ms Woolcock's case can be found in Appendix Three.

committals *in absentia*. The clear and only proper inference that can be drawn from the sheer volume of unlawful committal orders made on the basis of either of these errors is that there is something inherently wrong in the system... [that is] ignorance of the law on the part of the magistrates who dealt with committal applications, such that they did not determine such applications within the scope of the law. That ignorance is compounded by the similar ignorance of the law by legal advisers who advise magistrates, and legal representatives (including duty solicitors) who appear before them. The ignorance of the magistrates etc is inherent in the operation of the system of council tax enforcement (and, thus, the system itself) at the stage where the magistrates' courts become involved, which leads to an unacceptable risk of a council tax debtor in the system being the subject of procedural unfairness. The system has shown itself...to be incapable of correcting itself to ensure the required minimum procedural fairness.⁶¹³

The main failures identified by the claim were unreasonably long suspended committal orders and committals *in absentia* - those made without the debtor present. I will consider these issues in turn, before discussing the judicial reasoning which informed the decision to dismiss the claim.

LENGTH OF SUSPENDED ORDERS

Under Regulation 47(3)(b)⁶¹⁴, the magistrates' court, if it is of the opinion that failure to pay arrears is due to wilful refusal or culpable neglect, can 'fix a term of imprisonment and postpone the issue of the warrant until such time and on such conditions (if any) as the court thinks fit'. The regulations therefore do not contain any limitations on the length or nature of the postponement. They also do not suggest for what reason a magistrate may choose to suspend a warrant rather than issue it immediately. In Ms Woolcock's case, there was no time limit to the postponement, only a condition that she must pay a total of £10 a week towards her

⁶¹³ *Woolcock (No.2)* (n 595) [43].

⁶¹⁴ CT(AE)R 1992.

arrears. In concluding that her suspended order was excessive, disproportionate and therefore unlawful, Mr Justice Lewis stated that it would have taken Ms Woolcock 11.5 years to pay off her arrears for her first property and 6.5 years for the arrears on her second property⁶¹⁵.

At the beginning of the judgment in *Woolcock (No 2)*, Lord Justice Hickinbottom outlined sixteen propositions which he described as "well-established and uncontroversial"⁶¹⁶. This included the following statement concerning the postponement of warrants of committal:

the period for which instalments are to be paid must be reasonable... generally, where the period is two or three years, an order will be reasonable. Cases will be rare in which an instalment period of over three years will be appropriate. In no case has an instalment period of over five years been considered appropriate.⁶¹⁷

It is perhaps therefore surprising that Justice Hickinbottom went on to cite five resources which had been recently issued to magistrates' personnel, all of which post-date *Woolcock (No 1)*.⁶¹⁸ If this time limit on lawful suspended orders was 'well-established and uncontroversial'⁶¹⁹ it would have been correctly applied in *Woolcock (No 1)* and would not have required such a large volume of guidance to be distributed, the status of which is unclear. Furthermore, the guidance cited consistently refers to a maximum of *two* years for lawful suspended orders, rather than three.

When postponing commitment, the postponement should rarely exceed two years.⁶²⁰

⁶¹⁵ *Woolcock (No. 1)* (n 566) [30].

⁶¹⁶ *Woolcock (No.2)* (n 595) [17].

⁶¹⁷ *Ibid.*

⁶¹⁸ *Ibid* [27-29].

⁶¹⁹ *Ibid* [17].

⁶²⁰ JCS News Sheet 04/2017.

Postponed committal – the reasons must be as cogent for a postponed commitment as an immediate. In addition, the rate of payment must be realistic and the order capable of being paid within two years.⁶²¹

Remittal – There is power to remit council tax. In general courts should be thinking about remittal if the court’s instalment order would mean it would take more than two years to pay off.⁶²²

Payment should not take more than 2 years to pay.⁶²³

In general courts should be thinking about remittal if the court’s instalment order would mean it would take more than two years to pay off.⁶²⁴

In discussing the justification for a two- or three-year limit on suspended orders, principles are drawn from the criminal law, underlining the hybrid status of this area of law as discussed in Chapters Four and Five. Justice Hickinbottom refers to the Magistrates’ Court Sentencing Guidelines of 2008, which state that a criminal fine should be of an amount that is capable of being paid within twelve months.⁶²⁵ There is no specific explanation of the reasons why longer orders were deemed inappropriate, and applying time limits to suspended orders is inconsistent with pre-committal enforcement by local authorities, where informal repayment arrangements are agreed but tend to continue until the arrears are repaid. Indeed, in recent years council tax has been included in Individual Voluntary Agreements (IVAs), consolidating multiple debts into a single repayment scheme over multiple months or years.⁶²⁶

Applying this time limit for suspended orders, the unlimited postponement of Ms Woolcock’s committal was inappropriate; it would have taken three or four times

⁶²¹ JCS News Sheet 11/2017.

⁶²² JCS News Sheet 11/2017.

⁶²³ JCS Council Tax Enforcement Check List.

⁶²⁴ National Bench Chairmen’s Forum July 2017; Magistrates’ Court Adult Bench Book August 2017.

⁶²⁵ *Woolcock (No.2)* (n 595) [20].

⁶²⁶ <https://www.stepchange.org/debt-info/council-tax-debt-and-iva.aspx>

longer to pay off her arrears than is considered lawful, albeit with very little explanation of the reasons why longer orders are or should be unlawful. The treatment of Ms Woolcock was not the main evidence considered in this second review, however. Before this review, a contested hearing took place concerning disclosure of evidence.⁶²⁷ The claimant sought disclosure of data analysis conducted by the Secretary of State for Justice, the second defendant in the judicial review case. The data related to 95 individuals who had been the subjects of warrants of committal in England and Wales between April 2016 and July 2017. It is not clear why this period of sixteen months was selected. The individuals are referred to as 'the 95',⁶²⁸ which suggests, although we cannot be sure, that this is a complete sample of all those subject to warrants of committal during the data period. In relation to those 95 individuals, a total of 134 suspended committal orders were made in the preceding six years. It is therefore assumed that some of the individuals were subject to more than one suspended order, although no further information is available. In terms of the content, we are told that the data 'comprise a summary showing the various orders made in relation to each person, including the historic suspended committal orders leading to the issue of the warrant.'⁶²⁹

Having been deemed admissible, Ms Woolcock's representatives relied upon this data as evidence that, once cases get to the magistrates' court, the system in practice was incapable of guaranteeing the irreducible minimum level of procedural fairness that is required where the liberty of the subject is at stake.⁶³⁰ As the data referred to is not publicly available, we must rely on the quantitative analysis of its contents provided by Justice Hickinbottom in the judgment. The main motivation of this description, it is submitted, was to downplay the extent of problems in the application of the law of committal.

We are initially told that 52 of the 134 suspended orders in the data set were for a period in excess of three years. In light of the above statements about the correct

⁶²⁷ *Woolcock (No.2)* (n 595) [72].

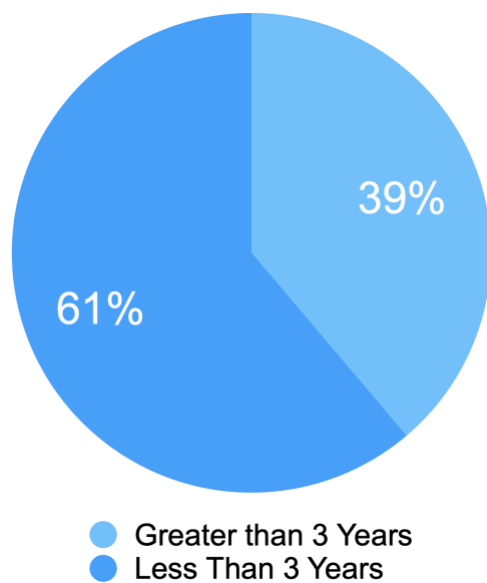
⁶²⁸ *Ibid.*

⁶²⁹ *Ibid.*

⁶³⁰ *ibid* [73].

application of the law on suspended orders and their length, it would therefore seem that 39% of the suspended orders made during the data period were unlawful. We are not given the number of orders which exceeded two years, which the above guidance would suggest should also be avoided and may be unlawful. The proportion of unlawful orders which exceed three years in duration are presented in Figure 10.

Figure 10: Proportion of Suspended Committal Orders by Duration (n=134)

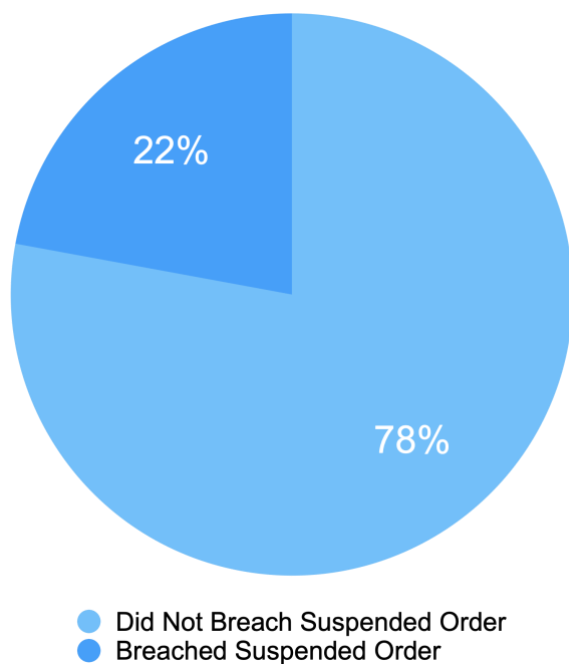


Instead of making conclusions based on the threshold of three years, Justice Hickinbottom proceeds to subcategorise the unlawful orders into his own arbitrary and uneven bands of 3-3.1 years, 3-5 years and greater than 5 years.⁶³¹ He also switches within the description of the data between references to individuals and to the number of orders, which is unhelpful and unexplained. Because each individual was subject to multiple orders, presenting the number of individuals affected seems like a smaller problem than if the number of unlawful orders is presented. We can see a funnelling effect in his description of the data away from the headline finding that 39% of the orders were unlawful because of their length.

⁶³¹ *Woolcock (No.2)* (n 595) [74].

Of the 95 individuals in the sample, 21 went on to be imprisoned after breaching suspended orders that were unlawful because they exceeded three years in duration. It is not clear at what time the suspended orders were breached, and it is assumed that this was not taken into account in interpreting these statistics. This equates to 22% of the sample, or just over one fifth, as shown below in Figure 11.

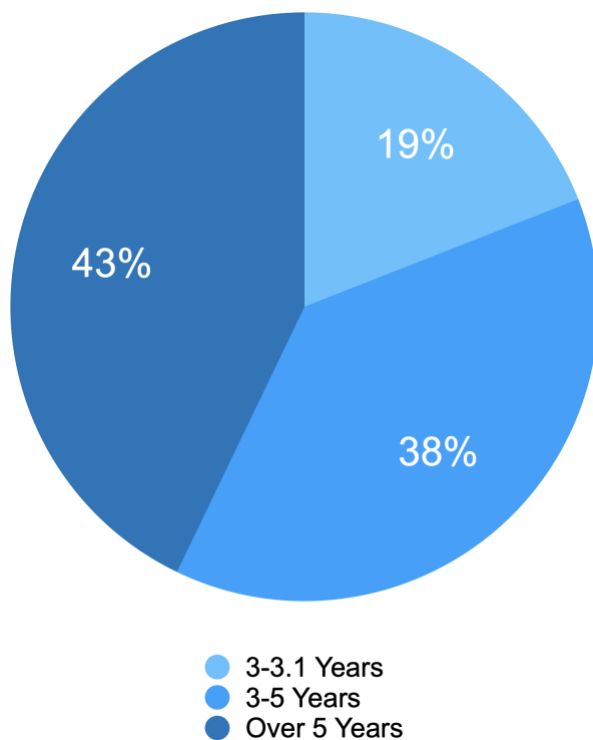
Figure 11: Proportion of Individuals who Breached Unlawful Suspended Orders (n=95)



Breaking down the data even further, he states that of those 21: ‘twelve were for a period of 3-5 years, of which four were for 3.1 years or less; and only nine were for a period of over five years.’⁶³² These figures are represented visually in Figure 12.

⁶³² *Woolcock (No.2)* (n 595) [74].

Figure 12: Length of Unlawful Suspended Sentences Where Subsequently Committed



Justice Hickinbottom does not address the fact that the largest category in his presentation of the data is the one which includes the longest orders, some of which could be even three times the recommended length or more because of the open-ended nature of the category. Instead, he says that ‘only nine’ fell into this category.⁶³³ This subcategorization is functional, as it allows Justice Hickinbottom to apply a hierarchy to the different lengths of suspended orders, which in turn enables him to diminish the severity of the breach in the first and even second categories.

I accept that the warrants of committal in respect of the nine individuals who had been subject to suspended orders which postponed commitment for over five years were almost certainly unlawful, and the warrants in respect of some

⁶³³ *Woolcock (No.2)* (n 595) [74].

of the eight individuals with a period of 3.2-5 years may well have been unlawful.⁶³⁴

He fails even to address the four cases where the order was between 3-3.1 years, even though these orders would have exceeded the maximum length of suspension recommended in all guidance to magistrates by a year or more. He then summarises the figures by creating a band of 9-17 individuals whose orders would have been unlawful, which he further reduces to an annual rate of 7-13 individuals or a percentage of 9.5-18%.⁶³⁵ There does not appear to be any useful reason for producing an annual figure when the data relates to a period of 16 months, other than to reduce the final statistic which is then used throughout the judgment to suggest that the problems of unlawful suspended orders are minimal and therefore not sufficient to demonstrate a problem inherent in the system. As we only have sixteen months of data there is insufficient information to be able to produce a reliable annual average. Under a strict application of the law on the length of suspended orders, the conclusion should have been that at least 39% of the sample orders were unlawful, excluding those of 2 years or more which we cannot quantify without access to the full data set.

Not only are the statistics described in a way which plays down the extent of the problem, but it is also stated that there is no evidence to suggest that the length of these unlawful orders caused the default in relation to the 21 individuals who went on to break the terms of the order, which is used to mitigate their severity. Given that the data set is described as a summary of the orders, it would seem unlikely that there would be sufficient detail in this data to indicate why each individual defaulted on their arrangement. Indeed, it is seldom possible to fully understand the complex reasons for any debts or the failure of repayment agreements. Regardless of the relationship between the length of the order and the reason for the default, a substantial proportion of the orders in the sample were unlawful on the application of common law principles which are referred to as "well-established and

⁶³⁴ Ibid.

⁶³⁵ *Woolcock (No.2)* (n 595) [74].

uncontroversial"⁶³⁶. They demonstrate the scale of erroneous application of the law in this context, where the liberty of the subject was at risk. The fact that both the volume and seriousness of these statistics was reduced by description indicates a continuation of the compromise of debtor's rights, which are subordinate to the objectives of the enforcement system.

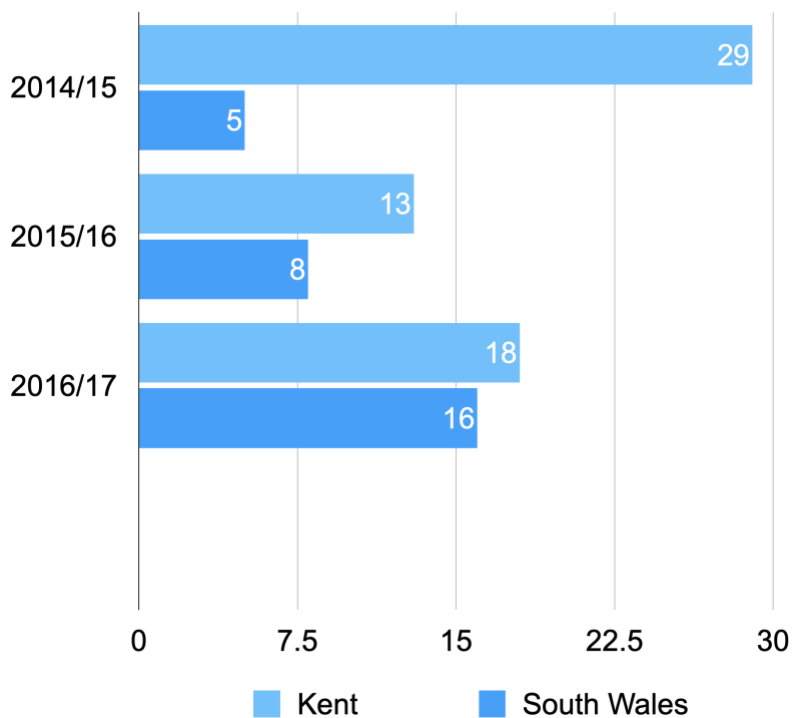
COMMITTALS IN ABSENTIA

The second element of the claim of procedural fairness was the number of examples of warrants of committal being issued without the presence of the debtor in court. This happened in Ms Woolcock's case, although this did not form part of her initial challenge to her imprisonment. The data disclosed highlights the frequency with which this was occurring. Unfortunately, we are not given full geographical figures for this issue, as we were for suspended orders. Instead, Mr Justice Hickinbottom states that the 'committals *in absentia* appear to be prolific in only Kent and South Wales.'⁶³⁷ It is not clear why the figures for a county (Kent) are compared with a large region of a country (South Wales). Nonetheless, we are provided with figures for the period 2014-2017, presented in Figure 13 below:

⁶³⁶ Ibid [17].

⁶³⁷ Ibid [76].

Figure 13: Number of in absentia committals (2014-2017)



It is highly concerning that Mr Justice Hickinbottom concludes from this data that ‘over 90% of the committals in Kent, and over 80% in South Wales, were made *in absentia*.’⁶³⁸ This raises the question of whether this practice could be seen in other areas of England and Wales, but these were excluded from discussion because their rates were lower than in Kent and South Wales. This extremely high rate of *in absentia* committals in these arrears is inconsistent with Justice Hickinbottom’s statement earlier in the judgment, which suggests that they should be rare.

Although the subject must be present in court for the means inquiry to take place, it is not a requirement of the regulations for him to be present when any suspended committal order is made or warrant of commitment issued.

However, before making any committal order, the court must ensure that the subject has been put on proper notice of the hearing; and will usually wish to make enquiries as to why he is not present, and consider steps to encourage

⁶³⁸ *Woolcock (No.2)* (n 595) [76].

or require his attendance. The magistrates have the power to issue a summons or warrant to require that attendance. If the subject does not obey a summons and attend the hearing, then no doubt, in practice, magistrates should and will make reasonable enquiries as to why he has not attended (including enquiries to ensure he has been properly served with notice of the hearing), and take reasonable steps to ensure or at least encourage his attendance. Following these steps, it is likely that in the vast majority of cases the subject will be in attendance at the committal hearing.⁶³⁹

He takes a less stringent view to *in absentia* committals than has been expressed in previous case law - for example, Mr Justice Collins in the case of *Jack*⁶⁴⁰, who stated that he found it 'very difficult to conceive of circumstances which would justify a committal in the absence of a defendant.'⁶⁴¹ Mr Justice Hickinbottom disagrees with this assessment and suggests that any decision about whether to proceed in the debtor's absence should be a matter of whether it is reasonable, proportionate and warranted to dedicate further time and costs to encourage the debtor's presence.⁶⁴² Given that the likely outcome of a committal hearing is a period of imprisonment, it would seem more proportionate to take the view of Mr Justice Collins that there are very few, if any, situations in which proceeding without the debtor present would be justified. As discussed in Chapters Four and Five, procedural protections are compromised in favour of efficient enforcement.

It was asserted above that, despite errors in setting the length of suspended orders, their length did not affect the outcome of committal. In the case of committals *in absentia*, the individual would have had no opportunity to engage in the hearing at which their future liberty was decided. This is perhaps the most serious infringement of the debtor's rights, eclipsing issues with legal representation and appeals discussed in Chapter Five, which at least suggest that the debtor took part in the hearing. Without further details of the procedural history of each of these cases, it is

⁶³⁹ *Woolcock (No.2)* (n 595) [17].

⁶⁴⁰ *R v Doncaster Justices ex parte Jack* [1999] 164 JP 52.

⁶⁴¹ *Jack* (n 643) [164].

⁶⁴² *Woolcock (No.2)* (n 595) [17].

difficult to conclude that the magistrates took all reasonable steps to bring about the defendant's attendance, but if it is correct that they should be in attendance in the vast majority of cases, it is difficult to understand why they were only in attendance for 20% of committals in Wales, and even fewer in Kent.

The descriptor of 'South Wales' makes it very difficult to gauge the distribution of the problem in the Welsh context. Applying the Welsh Government defined regions of Wales⁶⁴³, 'South Wales' would presumably encompass Southwest Wales and Southeast Wales, within which there are currently six magistrates' courts⁶⁴⁴. However, during the period 2014-2017 to which this data relates, there were an additional seven Magistrates' courts in operation in South Wales⁶⁴⁵ which have since been closed⁶⁴⁶, including Bridgend Magistrates' Court, where Ms Woolcock was originally committed. Without sight of the disclosure data referred to it is impossible to make further conclusions; the *in absentia* committals could have been isolated to one or a small number of courts or could have been linked to between six and thirteen different courts.

THRESHOLD OF PROCEDURAL FAIRNESS

A large section of the judgment is devoted to a discussion of whether Ms Woolcock's claim fitted the legal definition of a systemic challenge. Cited precedent focused on the difference between the inherent failure of a system and multiple instances of unfairness. For example, Lord Justice Laws summarised this distinction in the *Director of Legal Aid Casework*⁶⁴⁷ case:

⁶⁴³ ['Summary Statistics for Wales, by Region: 2020' \(Welsh Government 2020\). SFR 43/2020_1.](#)

⁶⁴⁴ Cardiff Magistrates' Court, Cwmbran Magistrates' Court, Cwmbran Magistrates' Court, Haverfordwest Magistrates' Court, Llanelli Law Courts, Newport (South Wales) Magistrates' Court and Swansea Magistrates' Court.

⁶⁴⁵ Bridgend, Brecon Law Courts, Pontypridd, Abergavenny, Neath, Caerphilly, Carmarthen

⁶⁴⁶ Georgina Sturge, 'Constituency Data: Magistrates' Court Closures' (13 May 2020)

<https://commonslibrary.parliament.uk/constituency-data-magistrates-court-closures/> accessed 1 December 2022. In addition to court closures, which mean that many more people now live more than 20 miles away from their nearest court, the number of magistrates in post fell by 46% between 2010 and 2021, as part of a 20% reduction of all HMCTS staff. [Georgina Sturge \(n 164\) 31.](#)

⁶⁴⁷ *R (S) v Director of Legal Aid Casework* [2016] EWCA Civ 464; [2016] 1 WLR 4733.

Proof of a systematic failure is not to be equated with proof of a series of individual failures. There is an obvious but important difference between a scheme or system which is inherently bad and unlawful on that account, and one which is being badly operated. The difference is a real one even where individual failures may arise, or may be more numerous, because the scheme is difficult to operate.⁶⁴⁸

Further guidance was provided in a case brought by the Howard League for Penal Reform⁶⁴⁹, in which Lord Justice Beatson advised that:

One way of drawing the distinction...is to distinguish examples which signal systemic problems from others which, however numerous, remain cases of individual operational failures.⁶⁵⁰

In summarising the points that could be drawn from precedent, Justice Hickinbottom states that:

Of course, the larger the number or proportion of aberrant decisions, the more compelling the evidence they may provide of an inherent systemic problem. In an appropriate case, it may even be sufficient to create an inference that there is such a problem.⁶⁵¹

It is difficult to draw a line between inherent failure and individual errors, and it is correct that they should be separated and dealt with differently. However, in making this statement concerning the volume of errors, Justice Hickinbottom opens a door by suggesting that an inference could be drawn from a large number of erroneous decisions. Given the above alternative analysis of the disclosure data, I would submit that the proportion of aberrant decisions relating to suspended orders and *in absentia* committals should have been sufficient to trigger this inference. However,

⁶⁴⁸ *Woolcock (No.2)* (n 595) [62].

⁶⁴⁹ *R (Howard League for Penal Reform) v Lord Chancellor* [2017] EWCA Civ 244; [2017] 4 WLR 92.

⁶⁵⁰ *Woolcock (No.2)* (n 595) [66].

⁶⁵¹ *Ibid* [68].

the quantification of the data applied by Justice Hickinbottom significantly reduced the appearance of the scale of the problems and undermined them in terms of suggesting that they did not materially affect the outcome for the debtors concerned, although there is nothing in the description of the data which would suggest that these sorts of conclusions could fairly or reliably have been made.

These attempts to downplay problems with committal can be understood when it is placed in the wider context of the council tax enforcement system. In summarising his rejection of the claim, Justice Hickinbottom provides perhaps one of the clearest articulations of the acceptance that committal may have been flawed in definition and application, but it was necessary to bolster the rest of the enforcement system:

The provision for ultimate enforcement by way of committal is just one small part of a sophisticated system for enforcement of council tax liability set up by Parliament which, as a whole, is remarkably efficient at recovery... One can only speculate as to the extent to which the ultimate sanction of imprisonment is effective in ensuring such a high rate of recovery; but... any error rate in committals has to be considered against that wider backdrop.⁶⁵²

The description of wrongful imprisonments as an 'error rate' is quite striking and demonstrates the extent to which individual rights of the indebted were compromised to secure wider compliance of the taxpayer population. Imprisonment as an enforcement method is seen as being imposed with 'an efficiency not attainable in the thickets of criminal procedure'⁶⁵³ where additional safeguards would limit the risk of unlawful imprisonment. Due process norms are framed as unacceptable detriments to council tax enforcement,⁶⁵⁴ rather than necessary safeguards for debtors at risk of losing their liberty. He also perpetuates one of the most common discourses surrounding this legal mechanism, one which was seen in Chapter Two in the relative absence of committal in existing research on council tax enforcement;

⁶⁵² *Woolcock (No.2)* (n 595) [94].

⁶⁵³ *Mann* (n 429) 1820.

⁶⁵⁴ *King* (n 431) 341.

that it is used so infrequently that it does not justify concern or warrant additional training or law reform.

Ms McGahey has focused upon that part of the system that takes place in magistrates' courts, but even in that small part of the system, the numbers and proportion of cases are small compared with the number of applications for committal made.⁶⁵⁵

The perception that this issue does not affect many people is convenient in advocating for a continued 'emphasis on expediency at the expense of principle',⁶⁵⁶ as if principle that is infrequently violated is not violated at all.

Despite the criticisms which can be made of the analysis and reasoning in *Woolcock (No.2)*, and the fact that the claim was unsuccessful, it nonetheless served a very important purpose. It brought to light a substantial data set on the use of committal in England and Wales which may otherwise not have been available for scrutiny. This data highlighted a high volume of errors in the use of suspended orders and concerning levels of committals *in absentia*. Taking the findings of the literature review and the present chapter together, we can see how exclusively quantitative measuring can be used to augment the scale of a problem positively or negatively. This underlines the need for qualitative analysis, and a more critical perspective on quantitative techniques, to achieve a full understanding of the operation of the law.

Furthermore, by seeking to establish procedural fairness, which requires evidence of systemic problems as distinct from cases of individual operational failures, the court was forced to openly acknowledge the substantial issues in the application of the law in this area, even if those issues fell short of a problem inherent in the system. The court was forced to agree with the criticisms levied at the system, seeking only to recharacterize them as inconsistent with procedural unfairness, but valid, nonetheless. Ms Woolcock was seen as a recent example of a much wider problem

⁶⁵⁵ *Woolcock (No.2)* (n 595) [94].

⁶⁵⁶ *Hendry and King* (n 427) 735.

which affected many people and led to large numbers of unlawful imprisonments. The errors are described in the judgment as both substantive and procedural⁶⁵⁷ and are present across England and Wales. It also brought to light the fact that, following *Woolcock (No 1)*, it was deemed necessary to update JCS guidance and issue new checklists and reminders on key aspects of the application of committal for council tax arrears. It is submitted that this training and communication would not have been required in a system which was already functioning in accordance with the law.

Given that Ms Woolcock's original committal was a decision made by a Welsh magistrates' court and the data suggested erroneous decisions in South Wales, it is difficult to avoid the conclusion that this judicial review, although ultimately unsuccessful, was a significant factor in the decision to consult the public on the continued use of imprisonment in Wales. The media coverage of Ms Woolcock's situation was significant,⁶⁵⁸ inviting scrutiny of the practice of imprisonment for debt, which many had been unaware was still being used. The importance of Mr Justice Hickinbottom's construction of the committal data (9.5-18% of cases) can be seen in the way it was reproduced by journalists.⁶⁵⁹ Although Ms Woolcock's circumstances and the errors in her case were not necessarily more severe than many of the others considered in the previous chapter, her challenge at a more fundamental level to the fairness of committal for council tax arrears prompted the Welsh Government to take a second look at this legal practice. After the judgment was issued on 17 January 2018, a consultation on its continued use took place between 11 June and 3 September 2018. The responses were summarised, and a written statement was issued by Mark Drakeford, the Cabinet Secretary for Finance at that time, expressing

⁶⁵⁷ *Woolcock (No.2)* (n 595) [97].

⁶⁵⁸ Frances Perraudin, 'The Woman Jailed for a £4,742 Council Tax Debt She Could Not Pay' *The Guardian* (12 April 2019) <<https://www.theguardian.com/money/2019/apr/12/woman-jailed-council-tax-bill-she-could-not-pay>> accessed 25 September 2022; Joe Giddens, 'Single Mum "unlawfully" Jailed for Not Paying Council Tax' *ITV News* (18 January 2017) <<https://www.itv.com/news/wales/2017-01-18/single-mum-unlawfully-jailed-for-not-paying-council-tax>> accessed 25 September 2022; Heledd Pritchard, 'A Single Mum Wrongly Spent 40 Days behind Bars for Not Paying Council Tax - Wales Online' *WalesOnline* (Wales, 18 January 2017) <<https://www.walesonline.co.uk/news/local-news/single-mum-wrongly-spent-40-12473743>> accessed 25 September 2022; 'Porthcawl Woman Jailed "unlawfully" over Council Tax Arrears' *BBC News* (18 January 2017) <<https://www.bbc.com/news/uk-wales-south-east-wales-38666030>> accessed 25 September 2022.

⁶⁵⁹ [Perraudin \(n 658\)](#).

his intention to legislate to remove committal from the regulations from 1 April 2019. This case may not have been the sole factor in the removal of this sanction, but the chronology suggests it was significant in the decision to reconsider the suitability of committal as part of the council tax enforcement toolkit.

THE PUBLIC CONSULTATION

BACKGROUND

Public consultations are a common mechanism used by the Welsh Government to collect views on current policy issues. At the time of writing, the Welsh Government are currently consulting the public on, inter alia, proposals to revalue properties in Wales,⁶⁶⁰ as was done in 2003 (discussed in Chapter One).

The Welsh Government consulted the public on the continued use of committal for council tax arrears for twelve weeks, between 11 June and 3 September 2018. This consultation was categorised as relating to communities and regeneration; there have been two other consultations concerning council tax since 2009. The title of the consultation was 'Removal of the sanction of imprisonment for the non-payment of council tax'. Two questions were asked:

- Do you agree that the sanction of imprisonment for non-payment of council tax should be removed?
- Do you have any other comments regarding this consultation?

⁶⁶⁰ <https://gov.wales/fairer-council-tax>. 'This consultation seeks views on: completing a council tax revaluation of all 1.5 million properties in Wales to rebalance the system to reflect property values. The current system is now nearly twenty years out of date. Designing a new system of bands and tax rates that is more progressive, including considering adding more bands to the top and bottom ends of the scale if needed. Revaluing more frequently to keep council tax fairly distributed on a more regular basis. Improving the framework of discounts, disregarded persons, exemptions and premiums to ensure the arrangements are aligned to our goals. Improving the Council Tax Reduction Scheme which provides support to low-income households.'

This title, and the questions asked, set the tone of the consultation; its intention was to collect views on the abolition of committal, rather than asking more neutral questions, for example, 'what are your views on the sanction of imprisonment for non-payment of council tax?'. This wording may have influenced the number and nature of the responses submitted, for example, discouraging responses from those who supported the use of committal who may have felt that the outcome of the consultation was something of a foregone conclusion. The extent of this is difficult to gauge but presents a similar limitation on this kind of data as was identified in relation to Greenall and Prosser's research for the Welsh Government in Chapter Two.

In terms of what prompted this consultation, there is a clear chronological proximity between the judgment in *Woolcock (No 2)* and its start date; judgment was given on 17 January 2018 and the consultation commenced on 11 June 2018. Despite the fact that the application for judicial review was unsuccessful, we can also see a clear acknowledgment in the text of the consultation paper that it was an influential factor in the decision to reconsider this enforcement method:

The recent judicial review involving a resident from Bridgend highlighted that, in some cases, people are being sent to prison unlawfully. The Welsh Government cannot take action in respect of the operation of the courts, as responsibility for this is not devolved. But we do have powers to amend the existing enforcement regime to remove the power to commit people to prison.⁶⁶¹

Here, we see the Welsh Government operating within the limitations of the devolution settlement to prevent further unlawful imprisonments in the most severe way – by removing it as an option in the regulations altogether. Rather than seeking to amend the provisions or make improvements to their application, the consultation was intended to ask fundamental questions about the propriety of this sanction. It can be

⁶⁶¹ ['Consultation Document: Removal of the Sanction of Imprisonment for the Non-Payment of Council Tax' \(Welsh Government 2018\) WG35286_6.](#)

seen as an open acknowledgement that committal was inconsistent with wider policy commitments of the Welsh Government to make council tax fairer.⁶⁶²

The consultation was circulated to 'key stakeholders including local authorities, debt advice organisations and citizens'⁶⁶³. Responses could be submitted by post or email and were accepted in either English or Welsh. After twelve weeks, a total of 188 responses had been received.⁶⁶⁴ This was a significantly higher response rate than for other consultations on council tax. Respondents could identify themselves or request for their submission to be anonymised; 84 respondents to this consultation requested anonymity.⁶⁶⁵

The Welsh Government conducted their own analysis of the responses received, the main conclusion being that 84% of respondents agreed that the sanction of imprisonment should be removed.⁶⁶⁶ Although the consultation was circulated to all local authorities as key stakeholders on the issue of committal, not all submitted a response. Of the twenty-two local authorities in Wales, fourteen submitted a response, as shown in Table 6.

⁶⁶² Programme for Government 2016-2021: 'Taking Wales Forward'; Prosperity for All: Economic Action Plan; Well-being of Future Generations (Wales) Act 2015 (anaw 2); Deddf Llesiant Cenedlaethau'r Dyfodol (Cymru) 2015 (anaw 2).

⁶⁶³ 'Explanatory Memorandum to the Council Tax (Administration and Enforcement) (Amendment) (Wales) Regulations 2019' 3.

⁶⁶⁴ 'Consultation Document: Removal of the Sanction of Imprisonment for the Non-Payment of Council Tax' (Welsh Government 2018) WG35286_4.

⁶⁶⁵ Ibid.

⁶⁶⁶ 'Consultation Document: Removal of the Sanction of Imprisonment for the Non-Payment of Council Tax' (Welsh Government 2018) WG35286_5.

Table 6: Which local authorities responded to the public consultation on the removal of committal?

| RESPONDED | DID NOT RESPOND |
|-------------------------------------------------|------------------------------------|
| BLAENAU GWENT | CAERPHILLY / Caerffili |
| BRIDGEND / Pen-y-bont ar Ogwr | CARDIFF / Caerdydd |
| CONWY | CARMARTHENSHIRE / Gaerfyrddin |
| DENBIGHSHIRE / Ddinbych | CEREDIGION |
| FLINTSHIRE / Y Fflint | MERTHYR TYDFIL / Merthyr Tudful |
| GWYNEDD | MONMOUTHSHIRE / Fynwy |
| ISLE OF ANGLESEY / Ynys Môn | PEMBROKESHIRE / Penfro |
| NEATH PORT TALBOT / Castell-nedd Port Talbot | POWYS |
| NEWPORT / Casnewydd | |
| RHONDDA CYNON TAF | |
| SWANSEA / Abertawe | |
| TORFAEN | |
| VALE OF GLAMORGAN / Bro Morgannwg | |
| WREXHAM / Wreccsam | |

In the remainder of this chapter, I will present findings from a more in-depth, thematic analysis of the responses, focusing on those submitted by the local authorities of Wales whose role it is to enforce payment of council tax.

POSITION ON COMMITMENT

Respondents were asked to provide a 'Yes/No' indication in response to the first consultation question, followed by supporting comments. Of the fourteen local authorities who responded, five expressed a clear preference for commitment to be retained as an enforcement option. Eight agreed that the sanction should be removed. Denbighshire County Council did not answer the consultation questions explicitly but provided some views on council tax enforcement in general. Neath Port Talbot Council did not submit a written response to the consultation but indicated that they disagreed that the sanction should be removed. These responses are presented below in Table 7.

Table 7: What position did local authorities take on committal?

| RETAIN COMMITTAL (R) | ABOLISH COMMITTAL (A) | AMBIGUOUS |
|-------------------------------------------------|----------------------------------|----------------------------|
| CONWY | BLAENAU GWENT | DENBIGHSHIRE / Ddinbych |
| FLINTSHIRE / Y Fflint | BRIDGEND / Pen-y-bont ar Ogwr | |
| ISLE OF ANGLESEY / Ynys Môn | GWYNEDD | |
| NEATH PORT TALBOT / Castell-nedd Port Talbot | NEWPORT / Casnewydd | |
| VALE OF GLAMORGAN / Bro Morgannwg | RHONDDA CYNON TAF | |
| | SWANSEA / Abertawe | |
| | TORFAEN | |
| | WREXHAM / Wreccsam | |

I will use the shorthand (R) to indicate local authorities who wished to retain committal and (A) to indicate local authorities who wished to abolish committal in the remainder of the chapter.

A large majority (84%) of the total respondents to the survey supported the abolition of committal, but Table 7 demonstrates that the result was not conclusive for local authorities, the group of respondents most closely connected with the proposed change in the law. Those who supported abolition made up 57% of the local authorities who responded, with 35% having advocated for its continued use. Because of the lack of available data on the frequency of use of different enforcement methods by local authorities, it is not possible to assess any relationship

between the position of authorities as expressed in their consultation and the extent to which they used committal.

Furthermore, it is arguable that the 'Yes/No' answers do not fully represent the nature of the responses from local authorities. Although five authorities expressed a preference for retention, they also provided detailed views on what should happen if committal was removed. This is likely to be connected to the leading tone of the consultation questions, which suggested that abolition was likely. Twelve of the fourteen local authority respondents made clear statements that, if committal was to be removed, it must be replaced by a new, alternative sanction or an extension of current enforcement powers. The only authorities who did not make such a suggestion were Swansea and Neath Port Talbot, but the latter did not provide a written response other than to express their resistance to the abolition of committal. It is therefore perhaps more accurate to categorise the authorities into those who supported pure retention, pure abolition, or replacement of committal.

Table 8: Did local authorities express more than retain or abolish committal?

| RETAIN COMMITTAL | ABOLISH COMMITTAL | REPLACE COMMITTAL |
|-------------------------------------------------|-----------------------|--------------------------------------|
| NEATH PORT TALBOT / Castell-nedd Port Talbot | SWANSEA / Abertawe | BLAENAU GWENT |
| | | BRIDGEND / Pen-y-bont ar Ogwr |
| | | CONWY |
| | | DENBIGHSHIRE / Ddinbych |
| | | FLINTSHIRE / Y Fflint |
| | | GWYNEDD |
| | | ISLE OF ANGLESEY / Ynys Môn |
| | | NEWPORT / Casnewydd |
| | | RHONDDA CYNON TAF |
| | | TORFAEN |
| | | VALE OF GLAMORGAN / Bro Morgannwg |
| | | WREXHAM / Wreccsam |

The number of authorities who advocated for replacement of committal tempers the findings of the consultation somewhat and suggests that the point of greatest consensus for local authorities was the need for new enforcement methods, regardless of whether committal was removed or not. It is an important caveat which is not fully reflected in the summary of the consultation responses. For example:

the Council is very concerned about Welsh Government proposals to remove the sanction of imprisonment for non-payment of Council Tax without, at the same time, giving careful consideration to the implementation of alternative recovery remedies that continue to support and strengthen the Council Tax system... Integrity of the whole council tax system is key to the funding of local service provision and we would ask Welsh Government not to implement the proposals without considering other alternative remedies through the judicial system. (Flintshire (R))

This is the key issue in this potential change – there must be a suitable alternative action that makes individuals engage with the Councils on these arrears. (Newport (A))

Committal action does seem out dated [sic], but we will need something to replace it... to allow for a fair collection system for all to be in place...there will need to be a replacement sanction to persuade some customers to address their debt. (Torfaen (A))

Wrexham go further in their response, specifying that the introduction of alternatives must be simultaneous with the removal of committal.

the alternative powers must be laid at the same time as the removal of the committal sanction. If the alternative powers cannot be laid at this time, there should be a delay in introducing the removal of the sanction to commit. (Wrexham (A))

There is a real sense in the consultation responses that, regardless of views on the propriety of committal, local authorities perceived its abolition as a reduction in their powers which needed to be rebalanced by the introduction of new enforcement methods. It seems that local authorities saw this consultation as something of a landmark moment in council tax enforcement where significant reforms over and above removal of committal could be tabled. Flintshire and Wrexham take the

position that new measures should be contingent on, or simultaneous with, the removal of committal.

EVIDENCE OF EFFICACY OF COMMITMENT

Seven of the respondent local authorities included arguments that committal had been effective in recovering arrears. The statements made by Bridgend (A) and Wrexham (A) were anecdotal, simply stating that most debtors tend to address their arrears following a committal summons or warrant of arrest, going on to maintain their payments in future. Five authorities, however, provided specific details of the impact of committal action, including quantification of arrears recovered at this stage, as shown below in Table 9.

Table 9: Quantitative data provided by local authorities on the efficacy of committal

| | |
|--------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Flintshire | <p>£136,000 recovered through committal proceedings (2015-2017).</p> <ul style="list-style-type: none"> • £32,000 paid after committal summons • £71,000 paid after suspended committal order • £33,000 generated through attachment orders where employment details came to light during committal hearing. |
| Newport | <p>£280,000 recovered in the last eighteen months.</p> |
| Rhondda Cynon Taf | <p>80 committal summonses issued in the last three years.</p> <p>28 payments or payment arrangements secured in advance of committal hearings.</p> <p>10 payments or payment arrangements secured after committal hearings.</p> |
| Vale of Glamorgan | <p>£416,712 recovered in last four years.</p> <p>7 individuals served a term of imprisonment.</p> <p>Cannot quantify amount recovered in response to pre-committal letters but have sent 3,741 in last four years.</p> |
| Isle of Anglesey | <p>19 debtors identified as suitable for committal proceedings, ruling out vulnerability. Combined debts totalled £113,000.</p> <p>13 out of 19 engaged after pre-committal letters, securing attachment orders or debt relief orders.</p> <p>Will pursue committal against 5 of the 6 who failed to engage.</p> |

It is interesting that not all local authorities provided details of their use of committal and the amounts recovered. Two of those who did provide such information, Newport (A) and Rhondda Cynon Taf (A), were in favour of removing committal, but had recently used it and had been successful in recovering arrears. These figures cannot be dismissed; although we can never have a true counterfactual against which to compare, if these sums had not been recovered at committal stage the only other alternative would have been to write off the arrears, which would equate to nearly £1million in lost revenue. However, it is important to note that none of the responses acknowledge the costs inherent in pursuing committal action or reflect the interaction between the cost of enforcement and revenue recovered, so we are only privy to half of the information needed to assess the extent to which committal represented value for money. Furthermore, for those such as the Vale of Glamorgan who refer to individuals who served terms of imprisonment, there is no attempt to quantify the wider knock-on costs to the local authority and national government in supporting those individuals whilst in prison or on their return to society, for example with housing, safeguarding of dependent children, or services to support them gaining employment, all of which are likely to have been disrupted as a result of their imprisonment. For those who were committed, it is presumed that their arrears were written off as unenforceable, further undermining the funds spent on pursuing committal. We can also not say anything about the source of the funds used to pay at this stage to avoid committal; payment does not amount to conclusive evidence that the individual always had funds to pay, it could just as likely have come from a third-party called upon to assist the debtor. Recovery at this stage may have satisfied the arrears but had untold consequences on those around the debtor. If, on balance, the outcome of enforcement action at this extreme of the system is cost neutral, or even cost negative, the economic justification for such methods falls away.

The content of the information provided is variable and difficult to compare. It is also not representative of the whole picture for the 22 local authorities. It is however an interesting example of one way in which local authorities justified the use of committal, focusing on numerical data and aiming to put a financial cost on the removal of committal. This suggests that they feel financial or numerical evidence is

most persuasive, which is consistent with the privileging of quantitative measuring that we have seen in advocacy literature to date (Chapter Two) and in the judicial reasoning applied in *Woolcock (No.2)* above.

IMPACT ON COLLECTION RATES

Although only five authorities provided details of sums recovered through committal, almost all of those who responded expressed concern about the impact on collection rates of the removal of committal. Not all authorities quantified the amounts they recovered through committal, but most identified a risk that they would be limited in the amount they could collect without committal. Connected to this were worries about the knock-on effects on funding for local services generated through council tax.

To take this method of recovery away without providing Local Authorities with an alternative option to recover debts owed would have a detrimental impact on collection rates. (Bridgend (A))

We need to ensure that we collect this statutory charge in the most effective and efficient way, to ensure fairness to citizens and allow for services to be delivered by the already financially struggling councils. (Torfaen (A))

Denbighshire went further than discussing decreasing collections rates, highlighting the significant pressure there is on Welsh local authorities to at least maintain their collection rates, if not improve on them each year:

other remedies would need to be made available in order to maintain or improve the current collection rates. (Denbighshire)

Flintshire expressed their pride in their record of collection rates in comparison to both other local authorities of Wales, and the UK.

Isle of Anglesey (R) and Wrexham (A) refer to wider concerns; they predict that not only will they be unable to collect arrears from those at the post-enforcement agent stage, but that the wider taxpayer population will begin to appreciate that there is no longer a severe penalty for failure to pay council tax, which could influence their decision whether to maintain their payments.

In an era of financial austerity with the proportion of Authority spending being met from the Council Tax increasing, to remove a key recovery sanction, in the Authority's opinion, can only lead to higher levels of non-payment over the next 2 to 3 years as the consequences for non-payment of a priority debt is lessened. (Isle of Anglesey (R))

More and more defaulters are wise to the practice of not engaging with enforcement agents as they know this will result in their case being returned to the council therefore diminishing this avenue of recovery. (Wrexham (A))

This underlines the deterrent quality of committal which local authorities value highly as it gives them a sense of control and certainty over the future integrity of collections. It also demonstrates the extent to which they assume all taxpayers have full agency to decide whether or not to pay, and feel they need to guard against an inevitable group who will intentionally avoid payment.

Three authorities make comparisons with collection rates in Scotland, which does not use imprisonment for council tax, which are consistently lower than in Wales.

The evidence shows that there was a 1.6% difference in the overall collection rate in 2016/17 between Scotland and Wales...A loss of 1.6% across Wales would therefore equate to a £24 million reduction in Council Tax revenue each year. (Vale of Glamorgan (R))

Whilst in the consultation document reference is made to levels of collection in Scotland, it should be noted that the levels of performance are lower than

Wales, and without appropriate options available in the Administration and Enforcement Regulations, it would not be unreasonable to assume that collection rates will reduce towards Scottish levels. (Wrexham (A))

As above, the authorities make explicit reference to the financial implications of reduced collection rates to strengthen their arguments, with reference to specific comparators.

SUGGESTED ALTERNATIVES

Almost all of the participating local authorities suggested committal should be replaced with a new sanction, with a wide range of different alternatives proposed. The following quote from Anglesey highlights the broad applicability which any new sanctions would need in order to be effective:

the consultation document provides no modern and proportionate alternative response to a civil debt issue where, for example, a debtor simply refuses to pay, does not allow enforcement agents entry to seize goods, is a tenant, is self-employed and has no realisable assets that could be considered under bankruptcy. (Isle of Anglesey (R))

It also goes some way to explain the appeal of committal for local authorities; all of the previous enforcement methods are contingent on the debtor being in certain circumstances, having certain assets or taking steps to engage with them. By contrast, all debtors have a right to liberty which they wish to protect, making committal a more universal enforcement method than almost all others, provided the legal tests can be satisfied.

The majority of the suggestions concern additional powers for local authorities to access and control the assets of the debtor, enabling local authorities to know their debtors and channel their enforcement efforts towards available assets. However, there are also calls for additional sanctions against the body of the debtor to replace

committal, perhaps because of the universality of these enforcement methods, which are perceived as an effective deterrent against both those in arrears and the wider taxpayer population. Despite the problems identified in Chapters Four and Five with punitive civil sanctions, local authorities attribute real value to the criminal mechanisms of control. I will now consider three of the suggestions proposed by local authorities: increased data sharing powers, asset seizure, and community orders.

DATA SHARING

Twelve local authorities suggested that the current enforcement regime would be improved by the introduction of a data-sharing arrangement between local authorities and agencies such as His Majesty's Revenue and Customs (HMRC) or the Department of Work Pensions (DWP). This was the most common suggested alternative.

As discussed in Chapter One, local authorities are able to secure attachment orders for employment income and income from benefits once a liability order has been issued. This is a very common enforcement method which allows the debtor to repay a fixed proportion of their income, collected at source, over a period of months or years. However, orders of this kind cannot be established unless the local authority have accurate and up to date details of the debtor's employer or their benefit entitlement, so they are reliant on the individual to pass this information on to be able to collect the arrears. The twelve local authorities who referred to data-sharing suggest that they should have the discretion to access employment and benefits information held routinely by HMRC and DWP in order to secure attachment orders, cutting out the need to rely on engagement from the individual.

Several respondents bolstered their arguments for data-sharing by referring to current practices for collection of Housing Benefits overpayments.

The proof of concept of sharing data between HMRC and Local Authorities to recover debt already exists. Since April 2018, HMRC have made their data available to LA's to enable them to identify employment and income details of individuals who have an overpayment of Housing Benefit which the Council currently has responsibility for recovering. Early indications from the Department of Work and Pensions (DWP) suggest that this is helping recovery rates of Overpayments significantly. Therefore, it would be logical to extend this arrangement to the recovery of council tax. (Rhondda Cynon Taf (A))

In addition, the response from Swansea (A) highlights that the local authority employees who currently deal with Housing Benefit overpayments are often the same employees who collect council tax arrears. Torfaen (A) stress that attachment orders are also 'more cost effective and efficient' than committal action for all concerned.

The Vale of Glamorgan (R) put forward arguments that there are wider benefits of a data-sharing arrangement:

In addition, LAs [local authorities] could also use the information obtained from HMRC/DWP to target potential recipients of CTRS where it is identified that households are on low incomes but have not submitted the appropriate CTRS claim form. (Vale of Glamorgan (R))

This demonstrates the reality that many individuals who fall into arrears may not be claiming their full entitlement to benefits or reliefs, which would make their council tax more manageable. Wrexham's response, however, is realistic about the practical challenges which data-sharing may present:

It would be beneficial to have access to HMRC data to enable us to obtain earnings information. This could lead to increased attachment of earnings orders. I appreciate there are likely many legal considerations as to whether this would be viable. (Wrexham (A))

The most significant barrier to data-sharing for local authorities in Wales is likely to be the constraints of the devolution settlement. HMRC and DWP are non-ministerial departments of the UK Government, meaning that the legislation required to introduce such an arrangement would need to be made at the UK level. This would require amendments to Part 5 of the Digital Economy Act 2017, as well as political consensus, which may become increasingly challenging given the increasing divergence between council tax policy in England and Wales (as discussed in Chapter One). Data sharing pilots are currently ongoing, including in Wrexham County Borough Council. Such pilots aim to match council tax debtors against HMRC and DWP records to identify sources of income which could be subjected to attachment orders. It is estimated that use of HMRC data through these pilot schemes could support recovery of around 20% of council tax debts outstanding in England and Wales. However, initial findings were that 30% of matched records showed no income from PAYE or self-assessment, and that 50% of matched records related to customers who earned less than the personal rate income tax band of up to £12,500.⁶⁶⁷

ASSET SEIZURE

With similar justifications to data sharing, eight local authorities proposed that their powers to seize the assets of debtors should be expanded. This process was variously referred to as arrestment and sale, garnishee orders, and third-party debt orders. Several referred to the system of arrestment and sale currently available in Scotland, where funds can be seized from an individual's bank accounts. In the same way that data sharing would allow the local authority to access information relating to the debtor's income from employment or benefits, asset seizure would give them legal authority to access bank accounts where debtors may have savings which could be used to address their arrears. As well as increasing their access to

⁶⁶⁷ 'Mid-Point Report on Use of the DEA Powers' (GOV.UK) 12 February 2020) <<https://www.gov.uk/government/publications/digital-economy-act-2017-part-5-codes-of-practice/mid-point-report-on-use-of-the-dea-powers>> accessed 20 November 2022.

information about the contents of bank accounts, local authorities could take control of any funds without the consent of the debtor.

Third-party debt orders are commonly used to enforce judgment debts in the County Court. Mechanisms of this kind are a fast way to secure repayment of arrears, but introduce their own complications, and are clearly only useful for the small proportion of council tax debtors who have funds but are actively choosing not to pay. They therefore have limited application, a factor in deciding whether it would be worth legislating for this enforcement method. Bank account freezes are usually time-limited, meaning the chosen account may appear empty on the day of the freeze but be credited with a large amount of money the next day.⁶⁶⁸ Additional complications arise where accounts are held in multiple names, or relate to a business, where the legal right to any funds discovered may be more complicated. There is also still the possibility that some debtors do not have bank accounts. The modern reality of multiple financial accounts is likely to present a barrier to the effective use of third-party debt orders.⁶⁶⁹

COMMUNITY ORDERS

Four local authorities proposed that a suitable alternative sanction to committal would be the use of community service orders. This suggestion was made by authorities who supported the removal of committal and those who opposed it. The main justification given for this kind of sanction, which is most commonly associated with criminal sentencing, was to maintain the integrity of the council tax system and be able to respond to those who deliberately evade payment of their arrears:

⁶⁶⁸ In other jurisdictions this has been resolved by creation of a standing instruction.

⁶⁶⁹ Major issues have been identified with asset seizure in other jurisdictions, such as the Netherlands. If an individual is the subject of multiple forms of debt enforcement against bank accounts this risks them being left with no funds to deal with their day-to-day commitments, leading to further debts. For more evidence on asset seizure in Europe, see: [Wendy Kennett, *Civil Enforcement in a Comparative Perspective: A Public Management Challenge* \(Intersentia 2021\) 324-326.](#)

For example, as an alternative to imprisonment, the implementation of community orders would ensure integrity of the council tax system is maintained. It would also have the effect of ensuring those who deliberately evade payment are held accountable before the judicial system where Magistrates could be empowered, through the introduction of new Regulations, to impose community orders at appropriate levels commensurate with the circumstances of non-payment. (Flintshire (R))

This kind of sanction would retain both the criminal nature of committal, and the option for enforcement against the body of the debtor, in terms of compulsory time spent in community labour, as opposed to enforcement against their assets. It would also retain the link to the magistrates' court, suggesting that local authorities perceive there to be a benefit in this recourse to the venues and fixings of the criminal law. There is clear reference to such an order being 'commensurate with the circumstances of non-payment', which perhaps reflects the lack of clear guidance on proportionality which was identified in relation to committal (and discussed in Chapter Five).

Torfaen emphasised the need for a coercive quality to whatever replaces committal, arguing that community orders would retain this and also provide an aspect of restitution:

There is the additional option to impose community service. We then retain the coercive nature of committal but have the power to impose community service which will give society something in return for non-payment of the charge! (Torfaen (A))

This emphasis on restorative justice⁶⁷⁰ is consistent with the theory behind the use of community service in criminal law, where similar community orders are given for

⁶⁷⁰ For further discussion of the theory of restorative justice and its application to community orders, see, inter alia: Lode Walgrave, 'Mediation and Community Service as Models of a Restorative Approach: Why Would It Be Better? Explicating the Objectives as Criteria for Evaluation', *Restorative*

acquisitive crimes to give the offender the opportunity to repay or rebalance the harm caused to society by their actions. Although this may appear less severe than imprisonment, the same issues may remain with the application of legal tests by courts; there will still be a requirement to distinguish those who cannot pay from those who refuse to pay, and the problematic hybridisation of criminal and civil law would remain, with all of the implications for procedural rules that were identified in the previous chapter. None of the local authorities who propose community orders detail how this would be implemented.

Outside of local authority submissions, twelve other individuals who responded to the public consultation suggested that community orders may be a suitable response to council tax arrears. This suggests that the deterrent function of criminal sanctions may have permeated beyond the professional level to a wider public discourse.

In the suggested alternatives to committal, we see further evidence of the perception that council tax will not be enforceable without a punitive civil sanction, such as community orders to replace committal. In recommending new powers to, for example, to access bank accounts and data about debtor income, we see a desire for enforcement methods which remove the debtor from the picture, but no consideration of the ethical implications of this intrusion on the privacy of the debtor or on society more generally. Because of this intrusion, it is doubtful whether this will foster effective conditions for long-term maintenance of council tax; these methods can be seen as effective in resolving current arrears but may create new problems for the future.

In the next chapter, analysis of interview transcripts with enforcement staff from five local authorities will be presented. Of the five local authorities interviewed, four submitted a response to the public consultation, with two in favour of abolition, one in favour retention and one ambiguous response.

Justice on Trial, vol 64 (Springer 1992). William R Wood, 'Soliciting Community Involvement and Support for Restorative Justice Through Community Service' (2015) 26 Criminal Justice Policy Review 131.

CHAPTER SEVEN – LOCAL AUTHORITY INTERVIEWS

INTRODUCTION

In this chapter I will present a selection of the themes identified in the analysis of interview transcripts. These interviews were conducted in January and February 2020 with seven senior members of staff of local authorities in Wales. For full details of the interview methodology adopted, please refer to Chapter Three.

Once analysis of the interview transcripts was completed (the stages of which are described in Chapter Three) I had identified one hundred and thirteen individual nodes to categorise the topics discussed in the interviews at the finest level. In reviewing this substantial list of nodes, I grouped similar topics together, creating ten themes. From these ten themes I developed four broader groups, which I refer to as narrative themes, which structure the analysis in this final empirical chapter. The first two narrative themes reflect on council tax enforcement prior to the removal of committal in 2019, whereas the final two narrative themes are forward-looking, aiming to understand the impact of its removal and to exemplify how past assumptions around debt enforcement may inform its future. The following analysis does not attempt to incorporate or reflect all of the qualitative data generated from the in-depth interviews, the transcripts of which contain extensive evidence about the enforcement of council tax which go beyond the scope of this specific thesis but present many opportunities for future research.⁶⁷¹ As discussed in Chapter Three, the aim of the analysis was to present a coherent and plausible narrative that sheds light on the use of imprisonment in this legal context. This chapter will present the themes, and they will be discussed in combination with the themes from Chapters Five and Six in the final Discussion Chapter.

Theme one focuses on how interviewees talk about their own work, its goals and expectations. Theme two brings together participant experiences of using committal

⁶⁷¹ As set out in Appendix 4, participants were informed that data generated from interviews may be used in future research and dissemination.

as a sanction, and the decision-making processes behind this use. Theme three encompasses discussions of the impact of the removal of committal on council tax enforcement and theme four deals with thoughts and ideas about the future of this legal area.

DESCRIPTIONS OF THEIR OWN WORK, ITS GOALS AND EXPECTATIONS

The focus of the interviews was to discuss imprisonment as a sanction and the impact of its removal, but this acted as an effective opportunity to reflect on the wider system of billing, collection and enforcement which preceded imprisonment.

Participants talked at length about, and were often at pains to express, the efforts of time and resource which were invested in the system of council tax billing, collection and enforcement. The description below demonstrates the high volume of work involved in the annual billing cycle, and the efforts required at the initial stages to ensure accurate requests for payment are provided to all chargeable dwellings.

'everybody gets their council tax bill for the year, and we'll issue 160,000 annual bills over the next three-week period, because if we put them all through the letterboxes on the same day, our contact centre would not be able to deal with the volume of calls, so we stagger them. In the year...we'll issue 300,000 adjustment bills, far more than the annual bills, and that's all changes. That could be changes to benefits, or it could be people moving.'

As discussed in Chapter One, provision of an accurate bill is all that is required of local authorities for most to pay their council tax. However, where payments were not forthcoming, all participants described their frustration at a perceived lack of engagement from individuals who had fallen into arrears:

'it's quite frustrating with some customers because they, I think it must be the lives that they lead, they must be chaotic lives, but you know you can send them bills, reminders, summonses and every single thing will be ignored.'

*'The problem we have is getting the people who are having difficulties for whatever reason to engage with us in the first place. That, in my experience, is the most difficult thing...'*⁶⁷²

This high volume of work and lack of engagement from individuals in difficulty is framed by an austerity context which also influenced how participants saw their roles.

'Oh I think it's just got harder, I think the roles are similar it's just the day job is a bit harder, you know... probably about four or five years ago, just in the area that I manage, I was asked to make half a million savings over the next three years, and the majority of my budget is staff. You know, so I thought well if I get rid of all those staff, we won't be able to, I might as well just turn the lights off and go home, we won't be able to provide the services.'

'It really is challenging. There's no light at the end of the tunnel really, the predictions for the next sort of three years is, well cuts, next year we're looking at I think £20million cuts, the year after that £20million cuts, the year after that another 20. Unless Welsh Government manage to get more funding from UK central government we are still in cut mode, not growth mode. So it is really really hard, and that's why income then becomes doubly important, I always say to the powers that be, if I don't collect it you can't spend it.'

Perhaps as a response to limited engagement and the pressure to reduce the cost of staffing, one authority had recently invested in technological solutions to automate contact with debtors and maximise the amount of money collected. We saw in Chapter Two that the Welsh Government had previously commissioned research on

⁶⁷² These concerns around engagement are reflected in the Good Practice Protocol: 'Whilst local authorities always seek to make early contact with a customer, it is often the case that the customer does not engage with a local authority until they receive a visit from an Enforcement Agent. The earlier the customer engages with the council the sooner advice and support can be provided which can assist residents in understanding their liability and payment responsibilities.' [Good Practice Protocol \(n. 172\)](#) 6.

behavioural change through the use of text messaging.⁶⁷³ During interview, this authority discussed how this software attempted to contact debtors through all potential forms of communication, freeing up staff from spending lots of time on the telephone.

'we introduced a process where...say we get five hundred liability orders, the day after the court...we pull all of these cases into the software...and it will outbound call all of these people. It will repeatedly try to call them if the number is engaged...if it's unsuccessful it will send a text message with a link to a web form...if that's unsuccessful it will send an email, so we're trying three different options and we're trying to do it over a period of time so that's going to reduce the resource of staff having to pick up the phone quite significantly.'

This authority used technology to relieve the burden of high-volume communications with debtors, but also to draw out behavioural data which could help them better understand the position each debtor was in.

'I can look at a report and it will tell me...this person's clicked on the 'seek debt advice link' so we know straight away...let's call them to see if we can make a referral to CAB [Citizens Advice]. There might be others that clicked on 'make a payment' but didn't actually go through with that payment, so we can use that information and phone them today, because there must have been some intention there to make a payment. It can really focus our efforts on what we need to work on.'

It should be noted as context that this authority was one of the first in Wales to enter into a strategic partnership with the global software and services provider, CIVICA, underlining the close relationship between the enforcement processes of local authorities and their commercial status and available resources. An example of an

⁶⁷³ 'Applying Behavioural Insights to Council Tax in Wales' (n 281).

advertisement for technological solutions such as this can be seen in Appendix 6, distributed at an industry event. As can be seen in this advertisement, the problem which the provider identifies, requiring a technological solution, is: 'Under pressure to reduce the cost of recovery, collect more with less resources?'

Connected with their descriptions of the level of work and innovation they had put into enforcement were reflections on their own expectations of their work and the 'customer service' provided to taxpayers who contacted them about council tax. For one authority, good customer service meant direct phone lines to their department:

'we're not a council that operates through a contact centre...if you're in debt with your council tax, you would come straight through to council tax service, you don't have to go through an intermediary or a contact centre, we don't operate with set scripts, our phone lines come straight through to advisors.'

For this authority, it seemed good customer service was dependent upon personal, non-formulaic interaction with clients by staff with relevant training and experience. They also discussed how customer service was part of their overall performance measures, contrasting this with a desire to avoid complaints and bad publicity.

*'ultimately we're here to serve...so whilst we're focused on collection of council tax, at the same time we are proud of the service that we provide to all residents, not just the residents that pay, but also providing a service level and a good service level to those that are in debt as well, because what we don't want, we don't want complaints, we don't want bad publicity, and we're here as public servants and we take pride in the work that we do.'*⁶⁷⁴

⁶⁷⁴ The volume of upheld complaints from citizens as a quantitative measure of performance is also reflected in the Good Practice Protocol: 'Local authorities should use their existing complaints procedures for people to report complaints. Local authorities should regularly monitor and publish performance information (if appropriate) in relation to those complaints which are upheld.' Good Practice Protocol (n 172) 4.

'generally we focus on complaints, we take verbal complaints, not just written complaints, so if anybody says I want to make a complaint then it will be treated as a formal complaint and logged accordingly umm...but you would be surprised, you'd be shocked, how few sort of like complaints in those terms there are so, you know the team do quite well in that regard. Nobody's happy to pay council tax but people accept it, you know.'

The monitoring of complaints as a key performance measure could be connected to the findings of the debt advice sector, discussed in Chapter Two, that there were low numbers of complaints received about the conduct of enforcement agents and that this was indicative of a flawed complaints procedure, rather than minimal issues. The second quote also highlights the increased likelihood of complaints in the context of debt enforcement, a situation which is likely to be perceived as extremely negative by those in debt. The frequency of complaints is another example of a quantitative measure applied critically to council tax debt enforcement which tells us very little about the decisions being made about arrears, but it has nonetheless been adopted by local authorities themselves as an internal metric of success. Statistics are used to construct a certain presentation of reality which we saw in Chapter Five in the interpretation of statistics by Lord Hickenbottom. Collection rates are a similar phenomenon, discussed by authorities with pride.

'often we've been the top of the tree in terms of collection rates, you can probably see this and I can send you a spreadsheet on this, when we rank ourselves over a number of years...we've been in an upper quartile collection position, the top 25% of collectors in Wales for the last ten years. For the last four or five, on and off, we've been either first or second, so 18/19 we were the highest collector of council taxes in Wales. Lots of the regional meetings we go to, most people will say, what's the recipe, how do you get to number one?'

As with complaint volumes, collection rates are used as a yardstick of success by external stakeholders and local authorities themselves, despite the knowledge that

collection rates are influenced by multiple factors, including regional deprivation and variation in property values across Wales, as discussed in Chapter One.

Despite the frustration with lack of engagement from debtors and the motivation to collect as much council tax as possible, authorities also demonstrated realism about the structural limitations which many debtors came up against, meaning that their arrears were not a choice, as shown in the following quotes.

'When you classify as can't pay and won't pay, definitely can't pays are a lot higher than the won't pays, I'd say you're probably looking at an 80/20 split.'

'I spoke to someone yesterday...he owes about £400, which isn't a lot in the grand scheme of things but, he has £500 to live off a month, that is his income, so how do you ask someone to pay? What do you ask them to pay when you think, OK, he's got a child as well, and their income is £500, so after his rent's paid I think it left him with £250 for bills, food...we're coming across that more and more now...they're clearly your can't payers.'

Some participants referred to unpleasant conditions in the properties of individuals in debt, underlining the realities of poverty and indebtedness they had witnessed through the debt enforcement process.

'You would usually find as well once somebody gets to the situation where they have arrears which are sufficient to merit a committal case, and for it to reach the court, that umm it was accompanied by a life change. Somebody lost their job, a drop in income, had been ill, umm...had ceased to qualify for certain benefits, I'm certain sort of if committal was still in place...that umm, Universal Credit triggers would see a substantial number of people possibly getting to that situation.'

'You need to sort of take your shoes off, you need to put proper boots on to go into some of these properties.'

'When the enforcement agents are going to certain areas...they'll come along and say yeah, we've called out three times...we're telling you that this is the worst house on the worst street in one of the worst areas... there's nothing there...the front door is half hanging off the hinges... You know there's a problem there and it's more likely that they should be getting benefit and they're not.'

Because of their objective to maximise council tax as a revenue stream, one might expect local authorities to avoid acknowledging the realities of poverty, but all the participants demonstrated a high level of understanding of the circumstances of debtors. This included appreciation of unsustainably low incomes, as well as the likelihood of multiple other debts outside of council tax arrears, and perpetual cycles of debt.

'When they're in debt, they're in debt. If they owe council tax, I guarantee they haven't paid their electricity bill or their gas bill or their water, they're gonna have other debts as well.'

'they slide into a situation where they pay whichever creditor calls loudest.'

'and some of the names they come up every year, it's sad in a way you know, and even umm...the cabinet member now in charge of...finance and lots of other things in [X] Council, he would recognise some names now, because they just come up to the top of the list so many times.'

There was, however, often a fine line between comments expressing sympathy for those in difficult circumstances and suggestions that these circumstances had been brought about by lifestyle choices of the individual, as highlighted by the following quotes.

'they've got a mixed sense of priorities, they've probably got a Sky TV top package, they've got the latest new mobile phone, they might have an account with William Hill, you know. They probably lead chaotic financial lives, they're used to being chased for multiple debts, they've probably got an overdraft with the bank.'

'You can't have a welfare system that we've had for so long that...probably was an enabler for people to not work, it probably was, and it did need to change, but...It had grown in generations, so you've got generations of people that have maybe only ever been on benefits?'

Every interview transcript contains at least one reference to 'Sky TV', with a total of twenty references across all transcripts. It was frequently used as an exemplar of domestic luxury, and an incongruous presence in the lifestyle of someone in debt, who it was suggested should only be committing money to essentials. This highlights the ongoing tension between ideas of structure and agency in situations of debt, and that often in situations where little is known about the causes of debt that there is a tendency to assume free choice and underestimate structural limitations. In terms of references to the wider social security system and its historic influence, these quotes highlight that the work of council tax enforcement is never apolitical. Where a void is created by a lack of information about the debtor, there is a temptation to fill that void with emotional responses and individual assumptions about the relationship between indebtedness and the welfare state, informed by political opinions. Davey's ethnographic work with indebted individuals highlights the sociological connections individuals make with entertainment equipment such as televisions and games consoles; despite coming with an initial outlay, they are often more economical (or are at least perceived to be more economical) than going out to the cinema, theatre or sporting events.⁶⁷⁵ They also contribute to a sense of domestic pride and social aspiration, as well as social connectivity.⁶⁷⁶ Additional functionality of televisions, such

⁶⁷⁵ Ryan Davey, 'Snakes and Ladders: Legal Coercion, Housing Precarity, and Home-Making Aspirations in Southern England' 26 *Journal of the Royal Anthropological Institute* 12, 22.

⁶⁷⁶ *ibid.*

as surround sound, large screens and a large choice of programmes increase their immersive capacity, acting as effective forms of escapism from the stresses of everyday life, including debt enforcement. In this way, with time they become an essential part of life. Similar criticisms have been made of the diets of individuals in poverty who rely on foodbanks; during the first wave of the COVID-19 lockdown, a foodbank in Lewisham received multiple complaints about the fact it was giving away chocolate and crisps in its food parcels. This prompted the owner to make a statement that ‘whilst we agree that they are of little nutritional value, we also believe in blessing our clients with a treat from time to time.’⁶⁷⁷ The ability of these so-called luxuries to render indebtedness as ‘suspensory’⁶⁷⁸ was not grasped by my interview participants, and criticism of such items were perhaps the most universal aspect of the interview transcripts.

Both the awareness of the reality of poverty and the perception that there was more that could be done for some debtors to address their arrears, meant that much of the day-to-day work of local authorities was taking proactive steps to encourage individuals in arrears to improve their circumstances. These efforts are described in the following quotes, which show the importance of long-term thinking, rather than dealing only with the current debt situation, because council tax is an ongoing financial liability.

‘a lot of what we do isn’t demanding money and recovering debt, it’s very much signposting people...giving people extra time, placing holds on accounts to allow people to put a claim in for Council Tax Reduction...we almost use it as a carrot, we say look, I will hold your account for two weeks, within that two weeks I want you to put a claim in for Council Tax Reduction...because why would you not do that? Believe it or not, people need that push to get things they’re entitled to.’

⁶⁷⁷ Grainne Cuffe, ‘Donations to Foodbank after “Treats” Complaints’ *News Shopper* (29 June 2020) <<https://www.newsshopper.co.uk/news/18548649.lewisham-foodbank-gets-chocolate-donations-complaints/>> accessed 28 November 2022.

⁶⁷⁸ Ryan Davey, ‘Suspensory Indebtedness: Time, Morality and Power Asymmetry in Experiences of Consumer Debt’ (2019) 48 *Economy and Society* 532.

'One aspect that we have with our local Citizens Advice Bureau and we've had it ten, fifteen years, is the concept of breathing space – we've always given our taxpayers, if they go and see Citizens Advice Bureau, a 28 day hold.'

Debt enforcement therefore can be seen as reliant on engagement with stakeholders such as specialist third sector organisations. All participants discussed their relationships with local debt advice charities such as Citizens Advice. In the next quote, one participant described a mixed relationship with their local debt advisors. Such meetings with advice agencies, held on at least an annual basis, are a commitment of the Good Practice Protocol.⁶⁷⁹

'the meetings that we have every quarter with all of the Welsh authorities...we invite guests to come along and we've had the CAB attend those meetings. Those have been interesting discussions, shall we say? Different local authorities have got different relationships with their CAB...our experience has been mixed, and I think a lot of that is down to personalities? We've invested a lot of time trying to get into a better relationship with CAB, because it's really important that we're all on the same side.'

A distinction was drawn between their interactions with local debt advisors and their wider relationship with national debt advice organisations.

'the national reports which are shaping policy, it's not the sort of like reality of the relationship we have with our local Citizens Advice Bureau, we're on first name terms, we refer cases, we discuss matters, we have quarterly meetings with them, we have a healthy relationship...I hope they would speak favourably of us.'

⁶⁷⁹ Good Practice Protocol (n 172) 4.

'So, I think what's happened...is that Citizens Advice have produced a number of reports that have been misleading...like Stop the Knock and so on...So, don't be misled...by the Citizens Advice sort of trying to make up their own truths. You know, this sounds terrible that I am at odds with the Citizens Advice!'

Here we can see the response of local authorities to the advocacy research discussed in Chapter Two, and a similar reluctance to be critical of organisations which provide a vital public service. Nonetheless, there is a clear tension demonstrated in these quotes between the distinct motivations of local authorities and debt advice, and a frustration with the quality of evidence and the validity of findings on council tax enforcement that are published by the third sector.

'Sometimes I think local government you know, and council tax in particular, can receive quite negative publicity, I think we're seeing this. Often, my own belief is that often we can be seen as the big bad wolf, and that we're aggressive in terms of our approach of collection of council tax, and actually, umm, we're actually the polar opposite of that, umm, we're not aggressive in our techniques in fact we are quite, you know, passive in our approach, umm, but, I think it's, I don't like to use this often but we're firm but fair, and we have to be because we can't lose sight as well that the work we're doing here is to collect taxes for the running of public services, so, without us being effective in our roles and collecting taxes on time, public services then, umm, fail because there is insufficient money coming into the council to be able to deliver those services.'

In thinking about how the local authority staff describe their own work, its goals and expectations, we have seen the challenges of workload and curtailed resources, the barriers created by non-engagement from individuals in arrears and the innovative technological methods used to try and encourage engagement. The performance goals of good customer service, low levels of complaints and high collection rates have been discussed, as well as the severity of financial circumstances of some

debtors. In parallel with this understanding of poverty we also see assumptions about lifestyle choices and political opinions filling the void left by a lack of information about debtors. The links between local authorities and the debt advice sector have been explored, and the difficulties of these crucial working relationships brought to light.

MAKING DECISIONS ABOUT COMMITTAL

As discussed in Chapter One, the regulatory framework of council tax enforcement only permits applications for committal once all other options, including the use of enforcement agents, have been attempted. For those cases which reached committal stage there were a series of decisions made by enforcement teams prior to this application, and a large amount of time in the interviews was dedicated to understanding the factors which went into deciding how to enforce payment of arrears, up to and including decisions to pursue committal. Participants gave insights into the processes they adhered to, taking into account multiple sources of information about the history of each arrears case, such as the level of arrears or the extent of engagement from the debtor.

'years ago, when I first became a court officer, so I was managing all the committal cases we wouldn't look at anything for committal under £2,000 so...normally at least two years of council tax, normally around that point, so we would look at that, and then we'd look at again what engagement we'd had, what the reasons were...have they got children? Umm...obviously you'd always look at what any other options, if we could do an attachment of benefits, if we could do an attachment of earnings, you wouldn't look at committal because it is, it would be a last resort and there's other avenues to go down...'

'We do actually do that as part of the end process before it goes to enforcement, we sort of have every case and we go through every single case one by one that's going to go to bailiff stage and we look to see if we've got

employment details, attachment details, are we able to contact them? Have they contacted us? You know, there are big checks in place.'

The checks and procedures applied when deciding whether to pursue committal included the specific wording of the regulations as they applied to a committal hearing.

And I suppose ultimately, I suppose the thing that we always assessed before we took cases to court or committal court were those four words: wilful refusal, culpable neglect. Now, we know to take those cases in the spirit of the law, we had to be satisfied that we have a good case to take to court somebody who has wilfully refusing or culpably neglecting to pay their council tax. Now, if it didn't meet that threshold in our professional opinion, we would never take it to a committal court.

There is no reference in this quote to the authority seeking legal advice, either internally or externally, as to whether individual arrears cases had reasonable prospects of encouraging payment or achieving a committal; it is presumed that such advice would be prohibitively expensive for local authorities, but it is important to note that a decision to pursue imprisonment was likely made without the benefit of professional legal advice. Furthermore, despite council tax enforcement staff having no requirement for legal qualifications to complete their role, they incorporate interpretation of legal regulations as a seemingly comfortable part of their professional judgement. This may be a technique to reduce the discretionary aspect of their role through the suggestion that their actions are merely adherence to regulations.

All of the interview participants, by virtue of their senior positions, had many years of experience working in council tax enforcement. This level of experience may go some way to explain the absence of legal qualifications or legal advice, as the tasks they are required to perform become somehow less legal through custom and

practice. As a result, they were able to reflect on occasions where they had been closely involved with applications for committal or had attended committal hearings.

'I have attended them, I didn't routinely attend them...my experience of the process was that it was fairly well managed, and in many cases, we'd end up with a payment arrangement that we previously failed to achieve.'

'means enquiries were always thorough and in fact, actually the latter days of committal I would say a lot more thorough than they used to be many years ago...I can remember taking committals, probably in the 1990s, where that process was not as thorough...I think through increased case load over the years, that became more robust...and more watertight in a sense as well.'

Although these descriptions are inconsistent with the errors of process identified in *Woolcock (No.2)*, we can see that the depth of experience allowed participants to characterise modern-day committals as better by comparison to previous practices, a narrative of 'things aren't as bad as they used to be' to defend a practice which has, with time, come to be perceived as controversial. This is similar to the description of committal as 'outdated' in the public consultation on its use; what was once approved of has lost favour with the passage of time. They also suggest that increasing numbers of committal hearings improved the process, when in *Woolcock (No.2)* the low number of cases is used to justify or explain the errors in application of the law. It is interesting to note the descriptive language used, such as 'robust' or 'watertight', synonymous with systems or mechanical processes built to withstand heavy use, in contrast to the tendency in common law legal systems to talk about matters being dealt with on a case-by-case basis, judged on their individual facts. This suggests a perception of local authorities that, if all processes and policies were complied with, there was no room left for 'leaks' or injustices. It also shows the extent to which local authorities prioritise the macro perspective on the council tax system, downplaying the level of individual discretion inherent in their role.

Other reflections on experiences of committal hearings included their interactions with magistrates. Two authorities offered examples of magistrates whose personal views or relationships were felt to influence their decision-making during hearings.

'We had one magistrate who was umm...quite prominent in CAB so he, you know, if you had him on the day, he would be very much on the side of paying £5 a week and going away without anything, and then we did have a couple where we thought there's a chance they might...it would depend on who you had on the day.'

'The individual concerned saw the chairman of the bench coming through the court...Those were the days where the chairman of the bench tended to be very well known in their communities, there was a particular chairman that this individual sort of knew from where he lived...The debtor concerned then went into his back pocket and said, 'right, there's your money for community charge, there's your balance, I'm not going before him because I'll end up in prison.' He said 'you'll find it's all there, you don't need to count it, I know how much I owe'. It was exactly the right amount of money.'

This is a factor somewhat unique to magistrates, as lay individuals of high standing in their communities. The implication of these examples is that some individual magistrates built up reputations for leniency or severity, and their perceptions of individual cases were skewed by previous professional experiences or personal relationships. This added an interesting element of regionality to the interview data, where participants reflected on issues in the committal process which were specific to their local area. Similar geographical variation could be seen in the perception of the adequacy of the court infrastructure, including the caseload of courts and the level of training of court personnel.

'The courts weren't generally set up to actually deal with that...the courts were pressed for time and even though we pay them a substantial amount to

buy their time, they still don't allocate resources sometimes, and they've cut back on the numbers of clerks and so on.'

'I think there would be variances in terms of the standard of service you might get from magistrates across Wales, but [here]...I think we had, well we still do have, good relationships with the local magistrates' court and the court clerks...I think they respected us and we respected them, so it always worked well for us.'

'One of the things that had been happening and could've happened here and may well have happened elsewhere, was that a lot of the courts weren't familiar with the procedures either...Now don't get me wrong, some of the court clerks are absolutely on it and no problems at all, but that had been an issue in the past.'

Despite the common experience across all participants of having attended committal hearings in the past, committal cases were repeatedly described as rare, with participants often using ratios to compare the number of individuals who required early-stage enforcement action with those who reached committal stage.

'You know we can go from you know 4000 reminders in one month and you may have one of them 4000 that ends up at a committal stage, you're not talking high numbers.'

'so the numbers, so you go from 160,000 bills, 15-20,000 reminders, 2-3000 summonses, well the number of cases then that we would have perhaps pushed through the committal route...would have been less than 100? So, in terms of percentage wise, it would've been significantly lower than. So, it's like a pyramid really or a sieve.'

Some authorities explained that they had made the decision to stop using committal before the regulations were amended. For one authority, this choice was justified as purely economic, after a cost/benefit assessment of their previous working practices.

'Even though Welsh Government only withdrew the right to go for committal, whenever it was, April 19, we took the decision really two years prior to that as part of a staffing review to look at what we were doing and we at one point had two full-time officers working solely on committals, and...you know, we looked at what they were doing, what the results were, and it was quite clear to us at that point that it wasn't cost effective to continue in that way so we basically merged those two teams into a generic team and pretty much stopped doing committal at that point.'

Other authorities were less explicit about choosing to cease all committal action but stated that it had been a long time since anyone in their authority had actually been imprisoned. In some authorities a choice had been made to move away from using committal as an enforcement method, whereas in another it was a necessity because of a commercial relationship which removed the option to pursue committal (as discussed above).

'I can't actually remember the last time somebody went to prison in [this authority] for non-payment of council tax, it's a long time ago. And what used to, and when it did happen it was usually maybe one case a year? Something like that.'

'Yeah, well we actually umm...the committal process was something that can't be contracted out so when...when the Civica partnership happened, umm...committals weren't something that the council wanted to continue doing, umm...so we had obviously the existing ones that we needed to maintain umm, payments on but, umm, no we hadn't done them for a few years, well certainly since 2015 anyway.'

One authority that supported the continued use of committal commented that those authorities who claim not to have used it may indeed still have relied on the threat of committal in their interactions with debtors, even if they did not ultimately ever pursue court action.

'On that, I mean obviously we have a lot of partner authorities that don't do, never have done committal...and then in the consultation it will say well we've never done committal, but, they may have not done the court side, but they will have mentioned committal, so when they're speaking to residents they will say "oh do you know you can go to prison?" They will still use it but won't actively take court action.'

In the previous chapter we saw how many authorities who had responded to the public consultation on committal relied upon monetary assessments of the amount of arrears they had recovered as a result of committal action but neglected to particularise the costs associated with pursuing that action through the courts. Interviews allowed us to explore the overall value for money of committal action, with participants from different authorities having very different views of the overall balance of cost versus results. One authority attributed their consistently high collection rates in comparison with other Welsh local authorities to their investment in committal as a form of deterrent, which became an aspect of their organisational reputation.

'one of the reasons we have always achieved the first place in council tax is because we've always had a very strong policy of taking people to court for non-payment at committal stage, whereas, some councils, and this is not being critical of other councils, lots of councils will say oh we didn't bother with committal, we didn't think it was worth it, or it was too expensive, or we haven't got the resources to take cases to court, we always made that investment in committal cases, and that's part of our success of making sure that, anybody who doesn't pay we will hold them to account, and if it's an appropriate case,

we will take it to committal court.'

By contrast, another authority had concluded that the costs of committal action, when combined with the need to achieve long-term council tax compliance, felt that committal was not worth it.

'it's a very time-consuming and unprofitable action for an enforcement agent to take so, umm... if you could get somebody to court and the magistrates would make a payment, a payment order, then they would either tend to be such small amounts that our tactic would be well right OK, we've got you here now, council tax being a debt that is generally ongoing, there's no point in trying to make an arrangement with somebody to pay £5 a week off a debt that was incurred three years ago when they're still not paying their ongoing council tax anyway... when you look at the eventual outcome and the huge number of hours of officer time, cost etc to get it to that point, then umm...on that basis it's not an economic thing to do.'

Participants often stressed their level of experience to bolster the validity of their responses to interview questions, at times even drawing direct comparisons with my own age to underline their level of experience of this area.

'And, you know, I... I've been doing committals in local government probably for the last twenty three years, so, I've seen the good and the bad in committal, generally as a professional I would say committals have a positive effect on the public purse in the end, and it's usually win-win...'

'Umm...generally the sort of like...well what I would say I've worked in this field for 30 years and...sort of my perceptions, I used to be an enforcement officer, I used to be the senior recovery officer before I was taxation manager so I'm steeped in that and...I used to do committal prosecutions you know did them for sort of like over 25 years so, well versed in it. I've spoken with literally hundreds of people and undertaken sort of like started thousands of cases...'

'I'm old enough to have worked, I haven't always worked in local government, I started off in the finance industry... probably long before you were born actually...'

This privileging of age and experience was an effective way to protect the profession against criticism, suggesting that any negative findings were more likely a reflection of a lack of understanding. This formed part of their professional identity. It is possible that this was a response to my position as a legal researcher; I may have known the law, but I hadn't 'been there, done that' as they had. The interviews were coloured by an implicit defensiveness of council tax enforcement, which is perhaps understandable given the level of critique in the advocacy literature discussed in Chapter Two, and the high-profile judicial review which had recently generated significant negative media attention. Throughout the course of the interviews, there was a sense that *Woolcock (No.2)* was something of an 'elephant in the room'. Participants would refer to it indirectly, rarely using the case name. There was a clear sense of the impact of the controversy surrounding this case on the council tax enforcement profession, and a desire to try to neutralise perceptions of it. In the following quotes we can see the participants shifting blame away from the local authority which sought the committal, identifying political as well as procedural causes.

'The consultation was a direct result of one particular case in Wales, you probably will know that particular case, and I think it was the negative publicity in the Bridgend committal case...the elected politicians in Welsh Government...I think it was on their radar to say actually, we're uncomfortable politically with people going to prison for non-payment of council tax. That seemed to be the main driver.'

'I think the turning point was the dinner lady in Bridgend that had the national publicity...the means enquiry wasn't carried out properly, so the lady did clearly owe the money but when it went to court the means enquiry wasn't

carried out thoroughly...If she'd ultimately been imprisoned with a proper means enquiry, she wouldn't have won...That's the court's fault, not the local authority's fault.'

In these quotes the participants only discuss the facts of *Woolcock (No.1)*, with no reference to the wider challenge to procedural fairness in *Woolcock (No.2)*, or the data produced in this case about unlawful imprisonments in South Wales (discussed in Chapter Six). This may reflect a limited level of engagement with the judgments, or a lack of appreciation that a legal matter such as judicial review may consider the facts of the individual case as well as problems inherent in a system.

Although participants reflected at length on the committal process, including giving specific examples of errors, it became increasingly apparent over the course of the interview sessions that local authorities were not concerned with, nor interested in, the legal status of committal hearings, or their hybrid nature, as discussed in Chapters Four and Five. This underlines the suitability of an interdisciplinary, socio-legal approach to the phenomenon of council tax enforcement, because the issues which are given most prominence through a purely legal analysis are not the same issues stressed by the actual individuals who apply the law and use its authority to complete their everyday work. In the case of committal, the removal of a highly problematic hybrid sanction is undoubtedly a positive step in improving the fairness of council tax enforcement. However, when the research design includes time to reflect with those who actually carry out the work of enforcement, we can see that problems which cannot be seen through a purely doctrinal lens are present and persist.

IMPACT OF THE REMOVAL OF COMMITTAL

In Chapter Six, the close chronological connection between the judgment in *Woolcock (No.2)* and the consultation on the removal of committal was discussed, and it was argued that the publicity which surrounded the findings of this case were a

significant factor in the decision to consult on its continued use. This was noted by interview participants, who saw the removal of committal as a 'kneejerk reaction'.

'Unfortunately, I think the removal of committal was a....a little bit of a kneejerk reaction...umm...and perhaps, I'm not saying committal didn't need reform, I think perhaps the process should have been re-looked at.'

'And I think unfortunately we've had just that kneejerk reaction to say, oh this person in Wales has ended up in prison, isn't that terrible? Let's get rid of committal. And it's like throwing the baby out with the bathwater. It's...it's umm...yeah, I don't think it'll, it won't be effective long term, I think it will come at a cost to the public.'

Interviews were conducted almost one year on from the removal of committal, so discussion focused on any early indicators of the impact of its removal as a sanction, acknowledging that some of its effects may take some time to become apparent. Participants expressed frustration with arrears cases that they felt they could no longer deal with, highlighting some of the limitations of the remaining enforcement options as discussed in Chapter One.

'I mean our last resort now is our enforcement team, and trying to engage...but from our perspective, if they just don't answer the door... there's nothing we can do...after that...you know, you look at the likes of bankruptcy, well, bankruptcy you've got to be £5,000 in debt, and the cost of it, it's just not, practical and they know that, and then...you know we have charging orders but, charging orders you have to own the property.'

'The issue we've got really now is, what do you do, umm, how do you resolve a case where a customer is persistently non-engaging with the council, lives in a rented property, and is self-employed? And I can tell you now, we have quite a few residents that drop into that category...and by the way, they have very little goods in the property, of which we could take, or there's no vehicles.'

These frustrations included the limitations of certain enforcement methods as well as characteristics of debtors who would be particularly hard to reach without the threat of committal. These individuals were characterised as cheaters in the game of council tax, dishonest people who exploited the system to avoid paying, and who local authorities must be cautious of.

'I think they're being cheated out of public funds that should be paid, and I think, we've seen cases before where people have the ability to pay council tax...they have the means to pay it...and, so it's not always cases of falling on hard times, they've had the means to pay but just choose not to pay because they don't want to pay council tax, and you can't underestimate those type of people.'

'This lady was a cruise-ship singer and when she was on the cruise ships she used to earn very good money but it was sporadic employment, but never used to pay anybody. She was quite a good little actress...she knew full well what she was doing so, people like that are.....a little more difficult to deal with, but nevertheless that's an individual that sticks in your mind because they were unusual, not the thousands of people who are actually struggling in life.'

Without effective remaining enforcement methods, participants expressed their disappointment at being forced to write off large amounts of council tax arrears for want of any other option.

'Individuals now that are not paying their council tax, that would have previously gone through the committal court and have done...and we're at the stage now, of where...we've run out of options around recovery, and sadly...have come to the conclusion we can only do one thing, and that is to write the balances off.'

'But the cases that are difficult to justify are the cases that haven't paid their council tax for last year or this year, and are still in residence at that property, now if we write that off this year, what message does that say to them for the 2020/2021 tax year coming up.'

In the same way that committal was valued for its deterrent effect on the taxpayer community, local authorities demonstrated their concern that writing off debts in individual cases may send a broader message of leniency to taxpayers, who may decide to take the risk of not paying their council tax on the basis that they expect their debts to be written off eventually. As in earlier chapters, we see the privileging of the wider impacts of enforcement over the fairness for individual debtors, a preference for errors which are overly harsh but act as a deterrent over errors that are unduly lenient and encourage non-payment.

As well as the undesirable leniency of write-offs, participants were also very concerned about the knock-on effects of writing off arrears on their ability to fund vital services in their area. As discussed in Chapter One, one hundred per cent of council tax revenue is used to fund local services, and council tax bills are set each financial year based on the revenue required by the authority to fund those services.

'No, it's really really difficult and hard then, because you're trying, you're trying to provide services with less resource all of the time. And at some point, things are gonna...umm...not succeed. Things are gonna get broken. And that's why it's even more important then, as council tax becomes more important to the funding, that you collect as much of it as possible. And then central government take some of the tools away from you, which are gonna affect how much you ultimately collect.'

'When powers are given in statute they are supposed to be used, that's why they're actually put there. Council tax is a tax, and umm...tax is morally different from other debts that you have. We have a social obligation to pay it, council tax does pay for education, social services, libraries, swimming pools

and so on. It used to pay for orphanages as well, so like that was one that tugs at the heart strings and it used to pay for the magistrates' court clerks, there was an element for the magistrates' court.'

This second comment highlights how truly circular the council tax revenue system is; the funds raised through enforcement action provide, amongst many other things, the funding for the courts which underpin the legal enforcement of council tax. It also shows how local authorities rely upon the normative idea that tax is an intrinsic part of citizenship and the fact that it is used to support the most vulnerable in society as a further form of coercion. This creates tension when individuals in arrears are unable to pay because of their own vulnerability. If an individual genuinely does not have the means to pay, the fact that their debts are in the form of local taxation as opposed to some other form of debt becomes less relevant, as no enforcement method will be effective against an individual who cannot pay.

In addition to being a circular system, it is not optional to provide essential council services such as police or other emergency services; the local authority is not able to refuse assistance to an individual who has failed to pay their council tax, in the same way that a bank can decline to offer credit to an individual with previous debts.

'now we're not like another commercial operator like a bank that can actually say, well OK then, let's stop the services to that resident, or...they won't be our customer so, we will end that agreement and we won't supply a service to that customer, well private sector can do that, in local government we can't say well, OK, we're ending local government services to you, we have to provide that statutory service to those people and quite rightly so we should.'

As local authorities cannot curtail the provision of services for those who do not pay, and cannot adopt a deficit budget for services, the only other option which participants identified was to increase council tax rates, an action which would only impact those who already maintain their council tax bills, which was seen by participants as unfair.

'Really what we're trying to do is to ensure there's an equal playing field for everybody because it is a tax, and it's only fair that everyone pays it, and if you get a significant minority that don't pay it, all that happens in the long term is that everybody else ends up paying a little bit more because we have to pay for the services that the council provides and the debts that we write off have to be paid for from somewhere. So, what we don't want to be doing is to be raising the tax for everybody else because you've got this one, two three per cent of people that don't pay.'

Both increased write-offs and rising council tax rates were seen as ongoing risks to annual collection rates in Wales. The severity of these anticipated reductions was demonstrated by comparison to other agencies responsible for collecting debts, such as HMRC.

'I suspect over time you are gonna see a reduction in collection rates across Wales. Traditionally, collection rates for council tax have been extremely high. Our collection rates on council tax are much better than the Inland Revenue manage to do. You know, average collection rates, ultimate collection rates are running up to about 99%.'

'I always find the recovery process which I think is fit for purpose and generally works very well, and I think that's testament, when you look at collection rates of council tax not just in [this local authority] but across the UK, there's not many agencies or public sector agencies, private sector that would collect as much council tax or as much debt, call it what you like, as local government, and how we do that is through a very effective recovery regime.'

This second quote expresses very similar sentiments to the conclusions of Hickinbottom LJ in *Woolcock (No.2)*, that the status quo of council tax enforcement through the committal was worth preserving because of how effective it had been in achieving high collection rates. Analogies were drawn with the enforcement of the TV

licence, another common household bill which retains the threat and sanction of imprisonment for non-payment.

'if you do that, we think the BBC could lose up to 200 million pounds of revenue coming into the BBC each year, so, and yet there were ten people in I think it was ten people across the UK that were imprisoned for non-payment of the TV licence last year, so, OK that's ten too many, but you think of ten residents out of how many, how many people are paying their TV licence, there are millions and millions and yet there's only ten people who've gone to prison for non-payment, so, it's the impact that brings, of, you know, if you remove committal, OK you might say that will only effect ten people, but the imposition, the impact of that, do people then think well OK if I don't pay my TV licence, you don't go to prison for non-payment and therefore I won't pay it.'

In drawing this analogy, we see another example of how local authorities prioritise the high-level perception of council tax by the whole tax-payer population, with the treatment of individuals who fall behind seen as collateral damage in an efficient wider system. Their concern that people would realise there is no longer a severe sanction such as committal was linked to suspicions that debt advisors were no longer classifying council tax as a priority debt, and therefore changing their advice to their clients about whether it should be prioritised.

'And I think our fear, and this is starting to be borne out slowly, and this is not being critical of advice agencies now, but we have picked up anecdotal evidence now, of where advice agencies would advise their clients, don't worry too much about council tax, because it's not a priority debt. You cannot be imprisoned for non-payment.'

'That drops the repayment of council tax down in the pecking order, whereas before, when it was committal, when committal was in place, payment of council tax, the advice agencies would say this as well, there were two debts

that advice agencies would always say to their clients are, whatever you do, these are your priority payments, well in fact there's three, your mortgage, your mortgage or rent, followed by your council tax. And after that, everything then was, well these are sort of non-priority debts, and I do believe that council tax in that priority system now...has...by default...gone down in the pecking order.'

As discussed earlier in the chapter, the relationship between local authorities and the debt advice sector is a crucial one, and these concerns about prioritisation make it clear how influential debt advisors can be on the success of debt enforcement.

When describing the impact of the removal of committal on collection rates, participants referred to risks of higher write-offs, greater levels of non-payment because of perceived leniency and de-prioritisation of council tax amongst other debts. As in the responses submitted to the public consultation, authorities discussed the amounts of money they felt they had only been able to recover because of committal action, and also stressed that even a one percentage point reduction in collection rates would equate to significant sums missing from their service budgets.

'we were conscious as well as part of the consultation to do it as evidence-led, rather than actually just giving an opinion and just throwing just this wild view out there, we wanted to try and advise, umm, Welsh Government ministers of the actual sort of, the financial impact of changing the law and that's what we spent quite a lot of work actually analysing the amount of money that we were receiving from cases that we'd actually taken to committal court, we'd actually looked at, evidence-led by circumstances looking at particular council tax accounts and then looked at the amount of income we'd received directly as a result of taking committal.'

'The narrative is that it [collection rates] might drop towards Scotland. If that did so in [X authority], we would lose over a million pound of revenue per year. OK it might not sound a lot, oh it's only 96% in Scotland and Wales is only 97.2

so what's one percent? Doesn't sound a lot, but it is a lot when you're collecting 85, 90, 100 million pound a year.'

But as in the consultation responses, both quantitative analyses fail to particularise the amounts invested in committal, an important factor in any objective assessment of the economic efficacy of committal action. In the same way that advocacy research presents one side of the story, such as the numbers of individuals seeking debt advice, local authorities do not present a full evidence base which would allow a thorough assessment of whether committal presented value for money. Even if significant sums were recovered through threatening committal, this would have come with associated court and staffing costs which would offset the amount recovered. Furthermore, if overall collection rates did reduce as a result of the removal of committal, if enforcement costs are reduced overall the effect on overall local authority revenues may be neutral.

One participant was in a minority in suggesting that they had not seen a reduction in collection rates attributable to the removal of committal. They suggested that any increase in arrears levels was linked to welfare reform and the introduction of Universal Credit and was alone in referring to an assessment they had carried out of the costs associated with pursuing committal.

'Now, that figure [council tax arrears at year end] fell steadily 15/16... 16/17, 17/18 we got it down to a fraction over 7 million at the end of 17/18, went back up to 7.7million last year, but that's predominantly because of the problems we've got with UC.'

'So, if you think about it, if your in-year collection has remained constant, your arrears are coming down, and the amount you're writing off isn't increasing significantly then...the conclusion that I would draw is that it's making little difference to the overall from there. And the sort of calculations that we did back in sort of 15/16 when we were looking to change is that we said right, how much staff time cost is spent on committals? How much fees are we

paying the court? How much money are we actually getting in from the cases...that we're doing committal on? And, bearing in mind that a proportion of those would have been paying us anyway for varying reasons, then it just didn't stack up, it was costing us more, considerably more than...than the time being spent there, so...putting aside the, whether it's a right thing to do or a wrong thing to do, from an economic perspective.'

This assessment of the impact of the removal of committal shows the importance of taking a holistic approach when making changes to enforcement practices. These assessments and reforms, such as deciding to cease using committal prior to its formal removal from the regulations, were often influenced by cultural changes and organisational goals and frameworks with which enforcement practices would need to comply. These cultural changes were underlined by comparison to historical practices, again underlining the level of experience of the participants.

'So, I suppose we are an authority that very much is looking to, I can never remember, I should be able to remember these things, but I can never remember the corporate aims, and it is reducing poverty in the area, then clearly by having a, an ethical approach to debt collection generally, and always looking to help where we can, is a positive one.'

'And it would be true to say that, you know, if you were having this conversation with me ten years ago, then we wouldn't have been doing that ten years ago, it would have been a case of, there's a debt outstanding, pay the debt, statutory process continues, there is a sort of sea-change in terms of approach, politically it's not, we are at the end of the day, you know, we are paid or employed to carry out the council's policy...but certainly of recent years the emphasis is far far more on looking to resolve the problems you know, treating people umm...almost by default as that if you're not paying, then it's not a case of you know your automatically somebody who is wilfully refusing to pay, we're coming at it from the angle at least initially that there is a problem...'

THE FUTURE OF COUNCIL TAX ENFORCEMENT

At the beginning of this chapter, we considered the problems identified by participants in encouraging debtors to engage with them after they had fallen into arrears. Without this engagement, local authorities do not necessarily know anything at all about the circumstances of the household to which the arrears apply. For this reason, many participants stressed the benefit of the court means enquiry, which was conducted as part of a committal hearing, and suggested that this should be retained as an option for when all other efforts to encourage engagement have failed.⁶⁸⁰

'it was the means enquiry really that we found the most value in because it was only at the means enquiry then that the customer would produce evidence of their earnings and their outgoings.'

'The means enquiry needs to be reintroduced, doesn't it? The penalty, I understand why politicians don't want to be imprisoning people for debts in the 21st century, I get that. But there needs to be a compulsion to engage and if the only way of doing that is through a means enquiry in a court...that needs to be introduced.'

This requirement for the court to 'enquire as to their means' provided context for the debtor's circumstances, as well as options for recovery, such as attachments orders for any sources of regular income that were identified.

⁶⁸⁰ It is helpful to contrast the position in relation to council tax enforcement with comparable processes for debt recovery in the High Court and County Court. Here, rule 71 of the Civil Procedure Rules regulates orders to obtain information. There is a distinct procedure for obtaining information and the debtor is ordered to come to court to answer questions and produce relevant documentation. Unlike the position for council tax, rule 81.4 provides for various procedural safeguards including the right to legal representation. As discussed in Chapter One, there is a general obligation under regulation 36 of the Council Tax (Administration and Enforcement) Regulations 1992 for the debtor to provide information when requested, but there is no formal procedure. If the desire of my interview participants to retain a judicial means enquiry was advanced, it seems sensible that this could be based on the existing Civil Procedure Rules (albeit this would require the involvement of a civil rather than criminal court).

'You should always maintain the means enquiry, the means enquiry is essential, because in many cases that's the first formal engagement or proper engagement that we have with the customer.'

Many of these ideas about increasing their rights to access information were not just as a result of non-engagement, but also because of an assumption that if they asked debtors about their circumstances, they would be evasive.

'People are not gonna give us the information to do it [an attachment of earnings order] if they know what we want it for, so we have to be very clever, staff have to be very clever in how they ask...because if they know that's our option...they're not gonna give it to us.'

Participants felt that debtors were not inclined to provide any information or would not give them the full picture. Trust in debtors to be honest about their circumstances was very low.

'People in difficulty, they tend to sort of tell you what they think you want to hear...I don't know that it's a British thing, people are very reluctant to actually disclose their full financial position.'

'Yeah, precisely, and I think some of them think we're stupid and we're not, generally, we do think about these things, and we record not necessarily physically record all telephone conversations, but on contentious cases notes are made.'

A lack of access to information about a debtor's circumstances was a shared frustration across interviews, and all participants suggested that an extension of their information rights would make enforcement of arrears easier. All of these suggestions were for access to information that did not require the consent of the debtor, cutting out the need to ask them about their circumstances and the risk of

relying on inaccurate or incomplete information. For example, through the wider work of the local authority participants saw existing information that would be assist them in seeking attachment orders but were not currently permitted to use the information for council tax purposes.

'we've got a big open plan office with stations with benefit processors, people collecting housing benefit overpayment, people collecting council tax, and everybody is getting different information but can't share it. That information is right there in front of our eyes, but we cannot use it.'

In order to access full and reliable information, authorities expressed a desire to be able to see data from other government agencies, such as HMRC, DWP and even social services.

'If we get 1,000 liability orders, in many cases we might not know where they're working, but HMRC would. On the bank account front, equally HMRC would have information about people's savings?'

'It should be wider, it should include DWP, it should because the normal public expect us to be talking and joining all of these services up, it's about working smarter, and if we're able to have a rounder, better picture of the customer from the information that's already held in government...that's gonna make the day job easier for everybody.'

'we've got no way of finding out the information that social services hold on these people, in the same way they've got no way of finding out what information we have on these people. If we had a corporate process, a vulnerability register, that could help lots of services look to tailor how they approach different customers.'

In all these suggestions there was a prioritisation of their objective to access more information, but little to no reflection on the rights of the debtor to confidentiality and

privacy, particularly in relation to highly sensitive information held by social services. When thinking about an ideal future of enforcement, the debtor was removed from the process almost entirely, highlighting that those concerns about engagement may actually reflect a deeper mistrust of the information debtors provide even if they do make contact. This mistrust was linked to both concerns that debtors were trying to evade payment, but also that some debtors lacked the capacity to deal with their affairs and provide full evidence of their circumstances.

One authority was less convinced that data sharing powers would drastically improve council tax enforcement because of the characteristics of people in arrears which may make them less likely to be monitored by employment agencies or have other income streams which could be used to address their arrears.

'In my view, it's a good idea. I'm not sure that it's the answer to everybody's ills that people think it is because...you're far more likely to find people in some kind of sporadic employment or self-employment than you are to find people who work in regular jobs... So, although, if you knew nothing about them it would be helpful in terms of gaining an understanding of their circumstances, but in terms of umm, are you suddenly gonna collect a lot more money, I don't think you would.'

This participant demonstrated greater pragmatism about access to information; this contrast showed how other authorities who stressed the importance of greater information powers work on an assumption that there must always be some source of funds they can identify if given the right access, when for those in serious financial difficulty there may not be. This is consistent with the fact that, prior to pursuing an application for committal, local authorities had to show that they had attempted to collect arrears through an enforcement agent, but this had been unsuccessful, a significant indicator that the individual had very little in terms of personal funds or assets against which to enforce.

The focus on greater information rights led to discussion of alternative methods local authorities had used in the past to establish the circumstances of debtors. This included use of social media, approaching individuals at public events, and resorting to the use of search engines to find online records.

'I'll give you an example of, a chap who...umm....hasn't paid us for years and years and years, umm, no reason at all, umm, obviously social media nowadays is quite an interesting thing and...we managed...there to find out that he's a regular drinker in a certain pub and one thing and another, and that was just confirming that he was actually still living where we thought he was living, because we had absolutely nothing from that guy. And then one of my chaps was around there, I can't remember which company it was now, a van parked outside...turns out this guy was working for [company name] for years and years... so, attachment of earnings order, all paid. Earning really good money so, but again how we managed to do it is another matter but, he was just invisible almost.'

'I can't remember who found out now, but somebody found out that he was involved in classic cars and there was a classic car exhibition on one Easter weekend and his name's all over the side of the car, so somebody managed to serve papers on him from there.'

'I mean, good old Google is, to be honest with you, it's amazing what you can find out from there.'

These examples demonstrate the lengths some authorities will go to find information about individuals in arrears. None of the examples referred to informal research methods which led to information which suggested the individual was unable to pay. When thinking about increasing formal powers for local authorities to access information, this anecdotal evidence should act as a caution that information is not necessarily used to obtain a full view of the individual but more specifically to find information which confirms the suspicion of the authority that the individual can

afford to pay their arrears. There is a risk of a confirmation bias in the use of official information such as HMRC or DWP records, where local authorities' mistrust of debtors translates into more indirect methods to identify funds and put in place attachment orders (which we saw in Chapter One can be unsustainable). This has the potential to cut out opportunities to engage with the debtor and agree a sustainable method to address their debts.

In addition to additional powers to access information, local authorities suggested other new forms of enforcement which they felt would preserve their ability to recover arrears. As we saw in four responses to the public consultation from local authorities, and twelve from members of the public in the previous chapter, community orders were commonly proposed as an appropriate replacement for committal.

'I think once it's gone, that's it, we'll never get imprisonment back, ummm...but, I don't know, could we get something instead? Like community sentence or some other recovery remedy and I can't think of many examples but, there might be another way, a better way of collecting debt other than doing committal?'

'a similar type of process but rather than committal to prison some sort of community service role, something like that.'

Community orders were deemed appropriate because of its similarity to committal and a perception that it would be just as effective. It was also justified as a form of restitution, paying back to the community.

'We just felt that...by having something back in the judicial system would allow people to be accountable, umm...for their actions or their neglect or their refusal to pay their taxes back to society? We did feel that if there was a community sentence put in place then...that might be just as effective as committal, of where they actually they could be imposed, a community or civil,

you know, a civil penalty or a community sentence, for, you know, for not paying their council tax. Just as almost a...as another remedy to ensure that they pay their taxes on time.'

'It's appropriate as well, you know you pay your council tax to provide services to the community...and what we said as well, like a community service, so obviously you're doing, it sort of fits...what it is, because, you know, you're putting something back into the community.'

This underlines the difference between council tax arrears and other forms of household debt; although council tax is a non-voluntary form of debt, it is laden with ideas of citizenship and collective contributions which have a significant influence on what is seen as appropriate enforcement. It seems unlikely that a bank would ever suggest a community order for someone who falls behind with payments on a credit card, despite the fact that this form of credit agreement is, to a greater or lesser extent dependent on the circumstances, freely taken out by the debtor. These quotes indicated that the fact that council tax is a tax will always lead to conclusions that it must be enforced through punitive sanctions, even where such methods would never be acceptable for any other forms of household debt.⁶⁸¹

Despite endorsing the development of community orders, one authority had clearly thought in more detail about the practicalities of such a scheme and felt that there would remain a need for committal to strengthen a community service order if the debtor simply refused to engage with it.

'If you're not contributing financially then community service order where you have to just work within the local authority to actually balance it out, that would have sort of proportionate. But there are additional costs and difficulties

⁶⁸¹ This can be seen by contrasting council tax enforcement with the rules and principles of the Financial Conduct Authority Handbook which applies to all banks, insurers, investment businesses and other financial services in the UK. Under Principle 6, a firm must pay due regard to the interests of its customers and treat them fairly. Under rule 7.3.17, repossession of a customer's home is described as the last resort of debt enforcement, having explored all other possible options. Financial Conduct Authority (n 92).

connected with that. I think there has to be a scheme locally doesn't there, it has to be monitored, plus as well I think you have committal by the back door there as well, with the community service order, if somebody doesn't comply with the community service order, there has to be the sanction of committal? To compel them to do it otherwise people will say 'no I'm not doing that'.

This demonstrates the entrenched idea that last resort, coercive sanctions are an essential element of an effective enforcement system.

In this chapter we have seen the realities of council tax enforcement as expressed by those responsible for it; interview participants illustrated the high expectations of their roles, the volume of work involved in council tax from billing to enforcement, and the ways in which their own performance standards have aligned with quantitative measures applied by external parties, such as the debt advice sector and national government. A frustration with lack of engagement from debtors has prompted technological solutions to try to better understand debtor circumstances, but this absence of information leaves room for personal judgements and assumptions about the causes of debt to influence the decisions they make. Local authorities are realistic about the need to engage with the third sector to achieve holistic debt enforcement but are concerned by the divergence between their positive relationships with local debt advice agencies and the criticism they receive from their national counterparts in advocacy literature.

In terms of how committal was used, participants gave detailed insight into their own processes and their experience of the court infrastructure. Although many played down the level of use of committal and stated that they had ceased using it as an enforcement method prior to its formal removal, they were nonetheless defensive of its efficacy for recovering arrears and sought to defend their actions in response to the negative media attention generated by *Woolcock (No.2)*. Experience was used as an effective defence of their views on council tax enforcement. When discussing the practical workings of committal as they experienced it, participants did not refer to the hybrid legal nature of the sanction, demonstrating the void between purely

theoretical and purely applied research which is bridged by a socio-legal project such as this.

Shifting to the current experience of enforcement post-committal, participants were critical of what they saw as a default decision to remove committal in response to *Woolcock (No.2)* and expressed concerns about a body of arrears cases where they now did not know how to enforce payment. They demonstrated a cynicism about individuals who 'cheat the system', forcing them to write off arrears and create what they saw as a culture of leniency and a de-prioritisation of council tax in the hierarchy of debts, threatening collection rates and revenues used to fund vital local services which could not be withdrawn from those who do not pay. Evidence was offered for the amounts collected as a result of threatening committal, but this lacked any reflection on the numerous direct and indirect costs associated with this form of enforcement which is an equally important factor if it is to be economically justified.

When looking to the future of council tax enforcement, increased powers were seen as essential, in particular, greater access to financial information about debtors and the option to pursue community orders as a sanction. An assumption that those in arrears would not provide full or accurate information prompted participants to seek options which bypassed the need to rely on debtors to explain their circumstances, including access to the records of agencies such as HMRC or DWP, as well as social services. This desire for more information was underpinned by attempts to research debtors through informal means, without any consideration of propriety or the impact on the rights of the debtor to privacy and confidentiality.⁶⁸² There was a suggestion that any new information could be used to prove their suspicions of avoidance, rather than to understand any structural causes of debts which were outside of the debtor's control. The suggestion of community orders to replace committal demonstrated the difference in treatment of debts to local authorities contrasted with debts to private

⁶⁸² Although it is outside of the scope of this thesis, an interesting avenue for future research would be to consider the different attitudes to privacy rights across Europe in the context of debt enforcement, in particular, the interpretation of Article 6(1)(e) of the General Data Protection Regulation 2018 which allows for processing of personal data when it is for the performance of a task carried out in the public interest.

financial organisations, and the persistence of ideas that council tax will be unenforceable without a criminal-style punitive sanction to coerce payment.

Taken together, these four narrative themes show the realities of debt enforcement, which is undoubtedly a highly challenging role which has been made more difficult in many respects by austerity. Local authorities simultaneously show understanding about the impact and prevalence of poverty, but despite this hold onto cynicism about non-payment and maintain that greater information rights and punitive sanctions are the only effective ways to protect collection rates without reflecting on the funds invested in these methods or the potential to infringe on the rights of the debtor. In the next chapter I will discuss how these four narratives drawn from interview transcripts, when considered alongside the analysis in Chapters Five and Six, provide answers to the research questions. The three empirical sources will be discussed through the conceptual lenses of the punitive civil sanction and the street-level bureaucrat.

CHAPTER EIGHT – DISCUSSION

In this chapter I will bring together the analysis in Chapters Five, Six and Seven to consider how the evidence they contain can answer the research questions.

HOW WERE COMMITTAL PROCEEDINGS AND IMPRISONMENT DEFINED IN LAW, AND WHAT IMPACT DID THIS DEFINITION HAVE ON THE RIGHTS AND PROCEDURAL PROTECTIONS OF DEBTORS IN WALES?

The analysis in Chapters Four and Five identified the ways in which committal for council tax arrears aligned with Mann's concept of the punitive civil sanction, and as a result, operated in a way that compromised fundamental procedural protections for the debtor facing loss of their liberty. Through analysis of a body of case law I identified a number of dominant ideas and assumptions of judges which I argue form part of the broader discourse of what constitutes fair and appropriate debt enforcement. Using Mann's elements of each legal paradigm, I considered what the case law told us about how the wrong of council tax arrears has been defined, what the purpose of committal was and what procedural rules were considered necessary to ensure a fair hearing. In terms of how the wrong was defined, we saw legal reasoning which included stark contrasts between civil and criminal law as a way of highlighting the unsatisfactory position of a civil debtor facing imprisonment. The successful claim for breach of the right to a fair trial in *Benham (No.2)* demonstrated the approach of the UK; the process was civil purely because they had labelled it as civil, despite multiple incompatible characteristics. Case law examples were used to evidence the inconsistent judicial approach to the purpose of committal, which has included coercion, punishment, and deterrence, all of which are flawed when applied to an individual who has no means to pay their debts, but which are perceived as having wider benefits for the efficiency of the wider council tax system.

In terms of the procedural protections deemed necessary in committal hearings, we first saw the inadequacy of rules of evidence, particularly related to the interpretation of the concepts of wilful refusal and culpable neglect, and the interaction of these

concepts with the judicial means enquiry. As a result of its classification as a civil law matter, options to appeal against a warrant of committal were extremely limited as compared with those imprisoned for a criminal offence. This limitation was never addressed through reform despite being highlighted in obiter dicta in the 1996 case of *Benham (No.2)*. Despite the severity of potential outcome there was evidence that in only three of the twenty-three cases analysed that the individual was represented during the hearing that led to their committal. This lack of professional guidance severely undermined the ability of individuals to engage with the hearing, leading to an award of compensation for one individual involved in the joint action of *Perks*. The position on legal representation was clarified in *Woolcock (No.2)* but had very little impact given the short time before committal was removed in Wales. Other than a maximum sentence of three months, debtors facing imprisonment would have been unaware of the way in which the length of their sentence would be calculated, as a result of a lack of formal rules around proportionality of sentencing, as is well-established in criminal law.

Taken together, these findings demonstrate that the committal of individuals for non-payment of council tax was plagued with fundamental uncertainty as to its defining characteristics, combining aspects of both criminal and civil legal paradigms to form a punitive civil sanction. This uncertainty is a direct result of an approach which prioritised form over substance; if something is labelled as civil, it must be civil and be treated like any other civil matter. Judgments were made based on surface level information about the debtor, with no attempts to make further enquiries or gain a full understanding of the debtor's circumstances, even to the extent of ignoring evidence which suggested they could not pay or attempts to make payment arrangements. This thinking has permeated into local authority practices, as discussed below.

The hybrid status of committal was undesirable in this context because of its effect on how judges interpreted its purpose. The majority saw it as a tool for coercion, what Davey describes as 'coerced compliance' – 'doing what you are told when this

is accompanied by a threat of force'.⁶⁸³ This, however, ignores the possibility that some who are imprisoned may have no choice in the matter, and ultimately will see their debts written off as a result of their incarceration. There has been explicit acknowledgment in the case law of the requirement for a punitive function to bolster the credibility of threats of imprisonment, which is interconnected with the belief that imprisonment serves a crucial deterrent function for the solvent and insolvent taxpayer alike, before they may reach this extreme stage of the enforcement process. These definitional problems fed into practical limitations on the protection of debtors' rights. They created a legal environment for debtors, many of which we have seen were in vulnerable circumstances, which was extremely challenging to navigate. Although all of the committals were quashed in the cases considered in Chapter Five, the debtors concerned still had to deal with the repercussions of imprisonment for themselves and their families, with no resolution of the arrears for the benefit of the local authority who sought committal.

Although the cases considered offer multiple insights into the use of committal, they have limitations as evidential sources, which are considered in Chapter Three. The cases span a large time-period and multiple forms of local tax, so to some extent reflect dominant thinking at the time they were each heard, but in turn have influenced the current discourse on fair enforcement. A fundamental issue is the unavailability of records of the first-instance decisions, meaning we must rely on records of appeals by way of judicial review. This perhaps reflects the lack of importance given to these cases, despite the fact that they resulted in loss of liberty. Deprioritisation of this kind can be seen as part of a wider trend to routinise debt enforcement, and perhaps reflects the absence of legally trained personnel in the earlier stages of the process.

The absence of legal professionals in the council tax enforcement department is a key justification for a socio-legal approach, as legal and lay personnel may analyse systems and identify vastly different features or concerns. For example, the empirical

⁶⁸³ Davey (n 681).

evidence analysed in Chapters Six and Seven indicates that the way in which committal was defined in law was not a concern for local authorities, who did not refer to its hybrid status or the impact of this in any of the public consultation responses or interviews. This could be a reflection of a subservience to formal sources of law such as courts, meaning that local authorities accepted the dominant narrative that committal was a civil process. Whatever the cause of this, it underlines the importance of socio-legal research, where concepts and research methods typical of sociological scholarship complement analysis of legal sources such as case law, identifying points of consensus and in this case, departure. It also supports the use of multiple and mixed methods of data collection in this research project, all of which provide perspectives on the legal phenomenon from different legal personnel involved in council tax enforcement. It is hoped that one benefit of the production of socio-legal research such as this is to encourage collective reflection between all involved in debt enforcement and a critical perspective on the status quo.

HOW WAS COMMITTAL JUSTIFIED AS AN ENFORCEMENT METHOD FOR COUNCIL TAX ARREARS IN WALES?

Throughout chapters Five, Six and Seven we have seen the sanction of committal explained or justified as an appropriate part of the council tax system in many different ways and supported by different forms of evidence.

In Chapter Five we saw how judges at first instance had openly referred to objectives such as coercion and deterrence in their decisions to imprison council tax debtors. The limitations of the idea that the threat of committal would coerce all debtors into addressing their arrears was highlighted in the cases of *Deary* and *Aldous*, where appeal judges concluded that the circumstance of the debtors gave no indication that coercion would be effective, as both individuals had very limited means and caring responsibilities which they would have prioritised by payment of their arrears if they had been able to. In the cases of *Ireland*, *Herridge* and *Meikleham* we saw open reference to a deterrent function of committal hearings, which was required to avoid the enforcement system being 'emasculated'. This deterrent function was heavily

influenced by the history of the community charge and large-scale refusal to pay local tax in the early 1990s. In all these cases we can see how committal was justified by reference to hypothetical situations constructed by the courts and that when these hypotheticals were applied to individuals who genuinely lack the means to pay, they lose all relevance, and the sanction becomes purely punitive. These purposes of committal are therefore not grounded in valid evidence but bolstered by a perceived need to protect the efficacy of the wider enforcement system, often at the expense of those who cannot pay their arrears.

The case of *Woolcock (No.2)* forced a fundamental discussion of the sanction of committal and brought into the open some otherwise inaccessible statistics on the number of errors made in committal hearings, leading to unlawful imprisonment. However, the way in which those statistics were interpreted and described reduced the extent of the problem in ways that are not supported by statistical reasoning or normal practice in quantitative research. It is submitted that these descriptions of the data were an attempt to reduce the appearance of the size of the problem because of the crucial difference in law between evidence of a systematic failure and a number of individual operational failures. It was this distinction which ultimately meant Ms Woolcock did not succeed in her second appeal by way of judicial review, but nonetheless the case brought to light serious failings in judicial interpretation of the regulations which were difficult to ignore. As with the reasoning in the case law considered above, again we saw a narrative that individual errors of law are to be tolerated if they serve a broader function of strengthening the enforcement system, regardless of the severe impact on the individuals who were wrongly imprisoned.

In responses to the public consultation and in interviews, multiple local authorities provided detailed figures to evidence the amounts of arrears they felt had been recovered only as a result of threatening or using committal. The amounts referred to were significant and should not be disregarded given their impact on overall collection rates and local authority revenues. However, only one interview participant had completed a full assessment of the value for money of committal action, including the costs and resources required to have pursued this kind of order. It is

submitted that without a consideration of the costs of committal, any data on the figures recovered presents only one part of the picture of whether it was economically justifiable to pursue this kind of enforcement, particularly since the arrears of individuals who are actually imprisoned become unenforceable. If collection rates are the key indicator of the success of enforcement, this interview participant also showed a broader appreciation of the fact that enforcement rates are influenced by multiple other factors, in particular the significant welfare reforms of recent years in relation to Universal Credit.

Perhaps the least convincing evidential defence of committal was that it was used infrequently; this was an argument that can be seen in the existing research, case law, public consultation responses and interview transcripts. As set out in Chapter One, despite the frequent minimisation of the volume of committals as a way to defend the practice, it is not possible to verify how often committal was used in Wales with certainty because of the lack of publicly available data on the frequency of use of each enforcement method, save for benchmarking figures for 2016/17 published by Greenall and Prosser. Furthermore, it is submitted that the volume of committals, which we can conclude on the basis of *Woolcock (No.2)* were frequently unlawful, is irrelevant when the stakes are so high, and an individual's liberty was at stake, with all the associated long-term effects on housing, work, dependents and wellbeing.

We can therefore see across the three empirical sources an over-reliance on quantitative measures which do not represent the full picture and can be manipulated to suit specific narratives. This quantitative preference may be common in other street-level bureaucracies:

'It is not sufficient that people are assigned a social worker, sit in a classroom, or have their cases heard. We also expect that they will be processed with a degree of care, with attention to their circumstances and potential. Thus, there may be no relationship, or an inverse relationship, between quantitative

indicators of service and service quality.⁶⁸⁴

We also see how fairness in the individual arrears case comes second to maintaining an effective enforcement system, even where this can lead to severe outcomes such as wrongful imprisonment; ‘expectations of proper treatment are framed in terms of satisfactory solutions for the optimal processing of the totality of the work rather than in terms of the best solution for individual cases’.⁶⁸⁵ The way in which a legal sanction is justified, and the types of evidence used to support these justifications may influence future decisions about the regulatory landscape of council tax enforcement, as these ideas permeate current thinking and the pressure on national government to replace committal increases.

WHAT FACTORS INFLUENCED LOCAL AUTHORITIES IN WALES WHEN THEY MADE DECISIONS ABOUT HOW TO ENFORCE PAYMENT OF COUNCIL TAX ARREARS?

In Chapter Seven, we saw how the council tax enforcement staff who participated in interviews reflected on their work and their prior experiences of committal. Their workload expectations just to complete the billing element of their roles was considerable, with enforcement of arrears requiring a more individualised approach; in this description of their role, we can see what Lipsky describes as the ‘fundamental service dilemma’⁶⁸⁶ of street-level bureaucrats: ‘how to provide individual responses or treatment on a mass basis’.⁶⁸⁷ Although enforcement of arrears is but one element of the local authority’s role, we can see how it has to be accommodated within their wider work schedules and therefore decisions about its use are influenced by levels of capacity once the day-to-day work of billing and collection has been completed.

Not only are work volumes extremely high, but local authorities are expected to do more with less since the introduction of austerity measures in UK public sector

⁶⁸⁴ Lipsky (n 460) 167.

⁶⁸⁵ *ibid* 67.

⁶⁸⁶ *ibid* 44.

⁶⁸⁷ *Ibid*.

funding. Evans highlights that Lipsky was developing the idea of the street-level bureaucrat in the United States of America in the 1980s, in the context of ‘a constrained public services working in a challenging environment’.⁶⁸⁸ The time and location may be different, but the political and economic climates are certainly analogous. Local authorities struggle with the practical realities of budgeting for services with reduced resources, but also bear the brunt of criticism as national governments responsible for austerity must ‘project images of adequate and reasonably comprehensive social welfare programming to taxpayers’ to ‘maintain legitimacy and deflect criticism’.⁶⁸⁹ Third-sector debt advice organisations struggle under similar budgetary pressures, influencing the style of their advocacy research as discussed in Chapter Two; perhaps this shared challenge should prompt greater humility in the relationships between local authorities and debt advice organisations.

Such relentless ‘trimming of the fat’ in local authority budgets has prompted greater innovation and automation,⁶⁹⁰ with investments in tools that can surpass human capacities and maximise contact with council tax debtors. We can see this in the use of automated calling systems which both increase rates of telephone contact but also provide behavioural data on the way in which debtors respond to this contact, feeding into their task of categorising the person in arrears. This drive towards greater use of technology was foreseen by Lipsky, who cautioned against eliminating people from the judgements required in public service administration.⁶⁹¹ Bovens and Ziridis describe this technological shift as a ‘process of transformation from street-level bureaucracy to screen-level and system-level bureaucracy’,⁶⁹² reflecting the reality that interactions between local authorities and council tax debtors no longer take place at the literal street-level but are mediated through computers and automated systems. There are of-course some benefits to this transition to digital solutions for the debtor: they can make contact with the local authority without fully revealing themselves, and new forms of communication may fit better with the

⁶⁸⁸ T Evans, ‘Street-Level Bureaucracy, Social Work and the (Exaggerated) Death of Discretion’ (2004) 34 *British Journal of Social Work* 871.

⁶⁸⁹ Lipsky (n 460) 184.

⁶⁹⁰ Lipsky (n 460) xv.

⁶⁹¹ Lipsky (n 460) 198.

⁶⁹² Bovens and Zouridis (n 483) 183.

realities of modern lives and variable work patterns. The cause of this transition and investment in efficiency are understandable in an austerity context, but it is arguable that these techniques have been widely accepted on the basis that they serve a practical purpose but have not been assessed from a normative perspective. There is a difficult balance to be struck between cost-cutting, convenience and privacy.

‘How have these forms of power been dealt with? Who checks the developers and their systems? To whom are they accountable for the manner in which they have converted analogue legislation into digital decision trees, scripts, and algorithms?’⁶⁹³

It is therefore important to consider when developing any future reforms to council tax enforcement that this work is imbued with discretion, and the technology used by enforcement staff is not neutral or objective simply because it is non-human. An additional element of the use of technology, which would be an interesting avenue of further research, is the commercial relationships between those who produce or sell the software solutions and local authorities. We saw in Chapter Seven how one authority who favoured technological solutions was part of a strategic partnership with a private software company, which undoubtedly influences the debt enforcement tactics of that authority.

The nature of enforcement decisions will be inextricably linked to the way in which good performance is defined in local authorities. However, local authority council tax teams must navigate the potentially conflicting goals of collecting maximum council tax and protecting the welfare of their citizens; it is conflict or ambiguity of this kind which is one of the defining features of the street-level bureaucrat, as discussed in Chapter Four.⁶⁹⁴ In discussing the aims and performance measures of their authorities, interview participants pointed towards the frequency of complaints and collection rates as key indicators of success. As is common in this area, quantitative performance measures are dominant, despite the fact that there exists no

⁶⁹³ Bovens and Zouridis (n 483) 182.

⁶⁹⁴ Lipsky (n 460) 40.

counterfactual against which to compare collection rates⁶⁹⁵ and in the case of complaints, it is somewhat unclear 'whether measured increases or decreases signal better or worse performance.'⁶⁹⁶ As discussed in relation to advocacy research, high numbers of complaints to local authorities can be interpreted as evidence of their poor practice, or of an effective and accessible complaints procedure in an aspect of public services which is associated with individuals in very difficult personal circumstances, who are likely to feel aggrieved. Further, we can never conclusively state whether, on the basis of the current evidence base, enforcement efforts of local authorities lead to an increase, decrease or maintenance of collection rates compared to a system with no enforcement activity at all. Halliday cautions against over-reliance on 'feedback loops' such as complaints mechanisms because they heavily prioritise information and guidance as the only solution to poor decision-making, ignoring the emotional element of such decisions.⁶⁹⁷ Such caution is particularly important when these mechanisms are imperfect indicators of satisfaction with a service or its fairness. High-level quantitative measures conceal the practices which underpin them, and as argued by Lipsky, 'agency-generated statistics are likely to tell us little about the phenomena they purport to reflect, but a great deal about the agency behaviour that produced the statistics.'⁶⁹⁸ As an alternative to drawing conclusions from numerical measures, the detailed findings generated by the qualitative approach of this thesis supports a move towards incorporating assessments of the propriety of local authority responses to indebtedness and the quality of their interactions with debtors,⁶⁹⁹ to achieve a greater understanding of how they operate as well as how much they collect. It also supports greater acceptance that there are some aspects of human performance that 'defy calibration'.⁷⁰⁰

In addition to the pressure that they work under and the technology they use, we have seen in the interview transcripts that the decisions of enforcement staff are

⁶⁹⁵ *ibid* 49.

⁶⁹⁶ *ibid* 50.

⁶⁹⁷ Halliday (n 452) 729-730.

⁶⁹⁸ Lipsky (n 460) 51.

⁶⁹⁹ *ibid* 206.

⁷⁰⁰ *ibid* 168.

informed by a realism about poverty and a close involvement in the work of referring debtors for help with their finances. Their involvement in the lives of the indebted is even stronger as a result of the universal and ongoing nature of council tax as a financial obligation; debt problems do not necessarily end, and ‘people do not stay fixed’.⁷⁰¹ The same individuals repeatedly present with arrears, both in relation to current and historical arrears. Lipsky sees this close relationship with the realities of poverty as a resource to be tapped, because it means that enforcement staff and other street-level bureaucrats ‘retain a sense that the people with whom they come into contact are not sufficiently served by the agencies designated to do so.’⁷⁰²

However, concurrent with but antithetical to this awareness of poverty was evidence to suggest that enforcement staff are often judgemental about the lifestyle choices of debtors, attributing their arrears to poor choices rather than structural barriers. Staff do not have reliable access to information about debtors as standard, creating a ‘space into which wider cultural morality flows.’⁷⁰³ Lipsky sees this as one of many coping mechanisms demonstrated by street-level bureaucrats; when participants made judgements about debtors in interviews such as ‘they’ve got a mixed sense of priorities’ or ‘they probably lead chaotic financial lives’, they distance themselves from the problems of debtors and absolves themselves of any blame.⁷⁰⁴ It also serves the purpose of enabling shortcuts and simplifications⁷⁰⁵ of highly complex and variable debtor circumstances into a finite typology, as we saw attempted in research by Dominy and Kempson in Chapter Two. This social construction of the debtor is a process which is open to being influenced by prejudice, stereotype, and ignorance,⁷⁰⁶ as much as it may be influenced by frontline experiences of the realities of poverty. This can include contemporary ideas about symbols of luxury, such as the frequent reference to ‘Sky TV’ being an unsuitable expense for individuals in debt in interviews. As we saw with advocacy research which exaggerates the extent of debt

⁷⁰¹ *ibid* 78.

⁷⁰² Lipsky (n 460) 190.

⁷⁰³ Caroline Hunter and others, ‘Legal Compliance in Street-Level Bureaucracy: A Study of UK Housing Officers’ (2016) 38 *Law & Policy* 81. Quoting Hasenfeld (2000).

⁷⁰⁴ Lipsky (n 460) 153.

⁷⁰⁵ *Ibid* 142.

⁷⁰⁶ *Ibid* 69.

problems to ensure a continued need for debt advice services, this stereotyping may serve a similar purpose in perpetuating a perceived need for local authorities who are prepared to practice strict enforcement, as it creates the appearance that there will always be those who actively choose not to pay or bring about their own debts. A similar phenomenon has been observed in the context of homelessness assessments and divergent interpretations of the housing legislation; in this context, Alden argues that different interpretations are attributable to the 'given decision maker's own worldview, life experiences and values.'⁷⁰⁷ We saw in Chapter Seven that these judgements are also linked to political opinions about the wider welfare system, which Halliday attributes to the current 'period of anxiety about the abuse of the system'.⁷⁰⁸ We cannot conclude that such prejudices arise as a result of a lack of training; Roth argues that 'there is no evidence that professional training succeeds in creating a universalistic moral neutrality.'⁷⁰⁹

Both the public consultation responses and the interview transcripts were empirical sources collected at the end of committal, and therefore were influenced by a need to defend practices which were now viewed as inappropriate or controversial. The criticisms consistently made by debt advice organisations through advocacy research also create an environment whereby local authorities must openly justify their practices. This translated into some examples of defensiveness from respondents and participants, and a common way to defend previous decisions and practices was to talk in detail about their level of knowledge and experience of their profession, even going to the extent of contrasting their level of experience with my own age. As with the simplification of debtor circumstances through judgement and stereotype, we can see references to age and experience as another function of street-level bureaucrats, described by Halliday as an 'ego-protecting mechanism'.⁷¹⁰ This builds upon Lipsky's view that compromises made by street-level bureaucrats, such as making assumptions about the reason for arrears rather than fully engaging with the debtor, are rationalized as a reflection of that worker's greater maturity and

⁷⁰⁷ Alden (n 468) 72.

⁷⁰⁸ Halliday (n 452) 733.

⁷⁰⁹ Lipsky (n 460) 85, citing Julius Roth.

⁷¹⁰ Halliday (n 452) 740.

realism.⁷¹¹ It forms part of their ‘professional instinct’ or ‘intuition’,⁷¹² which gives their decisions greater legitimacy and protects them from criticisms from the multiple sources of critique they must navigate.

We have therefore seen how the decisions of local authority collection staff are strongly influenced by their extreme workloads and an expectation to continually do more with less. These chronically inadequate resources lead to a number of functional shortcuts, both conscious and unconscious, adopted by local authority staff and other street-level bureaucrats. These include the use of new technologies to streamline contact with debtors and gather data, influenced by commercial relationships. Although some debtors may value alternative contact methods, there may also be losses brought about by the curtailment of human contact. In measuring their own performance, local authorities use quantitative measures which are ambiguous and do not present a full picture of the quality of enforcement. Their decisions are informed by their frontline experience of the realities of poverty in their communities, but nonetheless we can see instances where they make judgements or construct stereotypes to limit the types of case they are expected to deal with, distance themselves from the problem, and ensure there will always be a perception that some people will avoid payment and they are therefore needed. Finally, when under pressure from external criticism, local authorities rely upon their level of experience in the profession to protect themselves and project an image of the people who ‘know best’.

WHY WAS COMMITTAL REMOVED AS AN ENFORCEMENT METHOD FOR COUNCIL TAX ARREARS IN WALES IN 2019?

In Chapter Six we discussed the 2019 public consultation on the ‘removal of the sanction of imprisonment for the non-payment of council tax’, which was framed in a way which may have led many to believe it was something of a foregone conclusion, regardless of the outcome of the consultation, that committal would be removed. At

⁷¹¹ Lipsky (n 460) xiii.

⁷¹² Halliday (n 452) 740.

the highest level of analysis, a large majority of 84% of respondents were in favour of ending the practice of imprisonment for council tax arrears. However, by conducting further analysis of the responses submitted by fourteen of the local authorities of Wales it was shown that five authorities expressed a wish to retain committal. Breaking this down further and analysing the supporting comments provided in these responses, a more accurate summary would be that twelve of the fourteen authorities who responded made clear statements that, if committal was to be removed, it must be replaced with a new, alternative sanction of an extension of existing enforcement powers.

The decision to consult the public on the continued use of committal came shortly after the judgment in *Woolcock (No.2)*, following a period of media attention on this case and by extension, committal as an enforcement method for council tax arrears in Wales. This was described in interviews as a 'kneejerk reaction' to *Woolcock (No.2)*, with some participants suggesting there should have been a more careful consideration of possible reforms to committal before it was removed altogether. Any procedural problems highlighted by *Woolcock (No.2)* were characterised as judicial errors, and local authorities were defensive of the local authorities who pursued committal in this case.

The chronological connection between the judgment in *Woolcock (No.2)* and the public consultation on committal supports an argument that this case was something of a 'final straw' for the practice of committal in Wales. Because of the limits of the devolution settlement in Wales, the Welsh Government were not able to influence the practices of judges dealing with committal, leading them to conclude that the best option would be to remove committal from the regulations altogether. The strong support for the removal of committal in the public consultation provided a clear mandate to amend the regulations. However, by examining the decision to remove committal from the perspective of local authorities we see that they tend to adopt a pragmatic middle ground in response to polar choices and see themselves as an important source of evidence which should be closely involved in decisions about the legal reform of council tax enforcement. They are often resistant to dominant

narratives which are drawn from the media or advocacy research and favour deliberative change rather than swift reforms which they perceive as primarily a reduction in their powers without a commensurate reduction in the expectations on them to collect arrears.

WHAT HAS BEEN THE IMPACT OF THE REMOVAL OF COMMITTAL AS AN ENFORCEMENT METHOD FOR COUNCIL TAX ARREARS, AND WHAT DOES THIS SUGGEST ABOUT THE FUTURE OF COUNCIL TAX ENFORCEMENT IN WALES?

As was shown in Chapter One, collection rates declined between 2018 and 2019, with a significant dip in the 2020/21 financial year which is likely attributable to the impact of the Covid-19 pandemic and the suspension of enforcement action. The most recent collection rate of 96.3% in 2021/22 shows an improvement of almost 1% from 2020/21, despite the ongoing impacts of the pandemic which make it very difficult to draw any inferences about the impact of the removal of committal on collection rates, a significant concern of local authorities. We cannot therefore make any definitive conclusions about the relationship between collection rates and the loss of committal, but the decline in collection rates prior to its removal, and the increase in the most recent financial year, suggest that any reduction in collection rates should not be directly or solely attributed to the removal of committal. It also acts as a reminder that there are many other factors which influence these statistics and cautions us against using such high-level measures to assess enforcement quality.

When asked about the impact of the loss of committal, interview participants were highly concerned that they now had no option but to write off large amounts of arrears which they could not enforce as they had exhausted all other options. As discussed in Chapter One, the total amount of arrears written off since the removal of committal has actually been less than the six-year average prior to the removal of committal. Nonetheless, the pressure to write off arrears prompted fears that they were sending a message of leniency to the tax-payer population who may behave

differently if they believe that unpaid arrears would eventually be written off. Through the threat of committal, local authorities were able to ‘communicate the penalties for failing to display proper deference’⁷¹³ to their authority and the importance of council tax as a priority debt. To write off arrears would be to ‘let an affront to their authority remain unchallenged, since to do so would be to teach the contrary lesson, that lack of deference will not be punished.’⁷¹⁴ These motivations were discussed openly in cases such as *Herridge* and *Meikleham*, and again show the indirect objectives of enforcement to achieve optimal processing of the totality, rather than fairness in the individual case.⁷¹⁵

However, without further information about the cases where arrears are written off, we cannot conclude that all of these individuals have the means to pay their arrears but are choosing not to. This begs the question, when uncertainty occurs, what is the error preference of local authorities? Cameron defines ‘error preference’ as the need to determine which particular error risk is the worse of the two in a given context, on the assumption that there will always be some risk that local authorities make an error when they typically do not know the full circumstances of debtors at the point that they make enforcement decisions.⁷¹⁶ Halliday describes this context as ‘factual precarity’, and the choice as between ‘risking the injustice of denying a benefit to someone who deserves it, or the injustice of someone cheating the system’.⁷¹⁷ When committal was available as an option, the above empirical sources suggest that local authorities conceived of their choices as follows:

Type 1 Error: Deciding not to pursue imprisonment and write-off the arrears of a debtor who is able to pay their arrears but chooses not to.

Type 2 Error: Deciding not to write-off arrears and to pursue imprisonment against someone who genuinely cannot pay their arrears.

⁷¹³ Lipsky (n 460) 63.

⁷¹⁴ Ibid.

⁷¹⁵ ibid 67.

⁷¹⁶ Hilary Evans Cameron, *Refugee Law's Fact-Finding Crisis* (Cambridge University Press) cited in Halliday (n 452) 732.

⁷¹⁷ Halliday (n 452) 732.

We have seen in the above evidence that both local authorities and courts were very averse to risking Type 1 Errors, because they are both unfair in the individual case but also send a wider message of leniency to all taxpayers. By contrast, their preference was for Type 2 Errors, which may be unfair to the individual in question but have what they see as a very valuable deterrent or coercive effect on the wider tax base, leading to the entrenchment of a ‘culture of disbelief’.⁷¹⁸ This can be seen as the inverse of Blackstone’s Ratio;⁷¹⁹ for council tax enforcement it is considered better that ten people who *cannot* pay their arrears are imprisoned, than one person who *can* pay their arrears sees, and is seen to have had, them written off. This desire to avoid a reputation of leniency is acknowledged by Rock: ‘Debtors are pursued, often as conspicuously as possible, in order to deter others. Certain areas may be subject to strenuous enforcement in an attempt to demonstrate that a company’s reputation for ‘softness’ there is unfounded.’⁷²⁰ It should not be forgotten that behind this performativity of deterrence are real people whose lives may be significantly impacted. In this way the use of committal took a civil law attitude to risk with a criminal law sanction. Now that committal has been removed as an option, authorities are anxious about being forced to risk Type 1 Errors.

It is interesting to compare this perspective, where possible, to that of the public, in whose name local authorities act. In a 2020 YouGov poll participants were given three scenarios relating to different benefits provided by the welfare state: an individual applying for public housing (for him/herself and his/her child) on the basis that they had become homeless through no fault of their own, an individual applying to live in the UK on the basis that they feared persecution in their own country, and an individual applying for a discount on their council tax on the basis that they lived alone. Participants were told that it is sometimes not possible to verify the truth of the claimant’s circumstances and asked whether it was better to grant or deny their claims, taking into account this uncertainty. The majority of respondents (59%) indicated that it was better to grant the council tax discount, with 41% feeling that it

⁷¹⁸ Halliday (n 452) 734.

⁷¹⁹ Hendry and King (n 427) 746-747.

⁷²⁰ Rock (n 137) 178.

was better to deny their claim, indicating an overall preference amongst the public for risking Type 1 Errors – granting a benefit to someone who does not deserve it.⁷²¹ Although not conclusive evidence of public attitudes, this suggests a divergence between public and professional views on fairness in council tax enforcement.

This culture of disbelief is built upon an assumption that there will always be some debtors who are dishonest about their circumstances; we saw discussion of individuals who ‘cheat the system’ in responses to the public consultation in Chapter Six, and from different local authorities in interviews in Chapter Seven. Rock describes this as the haunting of the ‘professional debtor’, who is feared ‘in the manner in which the prison officer fears the escaping prisoner’.⁷²² Whilst accuracy is an entirely valid and essential element of the role of local authorities in dealing with council tax arrears, and it is true that some debtors will inevitably lie,⁷²³ the concept of the street-level bureaucrat prompts us to think about how the context within which the individual works influences their perceptions of service users. Halliday encourages socio-legal researchers to consider the influence of relatively banal emotions on street-level bureaucrat decisions, in particular, the ‘fear of being duped by dishonest claimants’.⁷²⁴ We can see this in the ways in which interview participants stressed their level of experience of the job (discussed above), and in comments such as ‘I think some of them think we’re stupid and we’re not’. When combined with a culture of disbelief, it is clear how some individuals who genuinely could not address their arrears ended up facing committal, or actually imprisoned, as these subtle influences skew decisions in favour of more punitive enforcement methods. The interviews conducted one-year-on from the removal of committal still show signs of these emotional responses, suggesting they could influence future enforcement and decisions about reform. It should also be noted, as discussed in Chapter Four, that interview methodology introduces an opportunity for participants to present themselves in a favourable light and does not permit direct access to live decision-making; if such emotional responses are reflected in my interviews, this would

⁷²¹ Halliday (n 452) 734-735.

⁷²² Rock (n 137) 187.

⁷²³ Halliday (n 452) 739, 743.

⁷²⁴ Halliday (n 452) 737.

suggest that they would almost certainly be present and observable in the day-to-day work of local authority enforcement staff. The difficulties of accessing this level of front-line decision-making is identified by Halliday as one of the barriers to developing a greater understanding of the emotional element of decision-making in socio-legal research.⁷²⁵

One example of this potential for influencing the reform agenda was the common suggestion across public consultation responses and in interviews that the rights of local authorities to access official information sources should be extended, to inform their enforcement action. This has included data from agencies such as DWP or HMRC, who may have information about income sources which could assist with pursuing, for example, an attachment of earnings order, and therefore bypassing the need to rely on 'dishonest debtors', who are seen as unlikely to tell them that they have an income. On the face of it this seems like a reasonable argument; there is information held by other limbs of the state which would significantly improve their understanding of debtor circumstances, and in an age of data linkage and 'smart working', it seems consistent with broader trends. However, the decision to increase access to information sources does not necessarily bring with it any mechanisms for oversight of *how* such information is used. Given the influence of emotion and the conceptual shortcuts used by street-level bureaucrats discussed above, it is submitted that caution should be exercised in granting such access without an additional check on how the information will be interpreted. As noted by Rock, there is a tendency to 'impose a structure on their [debt collectors'] uncertainty by attributing great significance to the limited information why they receive...every little piece of information is pregnant with meaning.'⁷²⁶ This raises the question of whether inferences and suppositions made on limited evidence are justified. In interviews we saw examples of informal research methods used by local authorities to confirm their suspicions that certain individuals were able to pay their arrears. Such methods were provided as examples of how effective local authorities can be when making use of all of the tools available but showed little to no consideration of the ethical

⁷²⁵ Halliday (n 452) 730.

⁷²⁶ Rock (n 137) 179, 189.

implications of such methods, and the very real threat to debtor privacy which they represent. Although it could be argued that such information is publicly accessible, it is not being used with the consent of the debtor and is used as an example to justify the use of highly sensitive data which is not publicly available. Furthermore, such examples suggest that these information tools may only be used with the intention to find information that proves a suspicion that the individual can pay, a confirmation bias which skews their interpretation of information.

‘an enforcement apparatus of this kind tends to create deviants through self-fulfilling prophecies...a great variety of data assumes increasingly sinister meanings. The means lend momentum to the process and the process colours the meanings.’⁷²⁷

If, for example, a local authority was provided with access to an individual’s HMRC records which indicated income tax paid in relation to employment income, this provides no information at all about the individual’s circumstances, outgoings or dependents which all make up their overall solvency and ability to address arrears. The evidence of emotional responses considered above suggests that there is a risk that identification of such data would prompt a feeling of success in the local authority, affirming their professional intuition, and may lead to an escalation of enforcement action without further questioning of wider circumstances, or any further attempts to engage with the individual. Even if the data was used to engage with the debtor, it does not seem conducive to a long-term debt resolution to use highly sensitive data obtained without the individual’s consent to leverage a repayment agreement. The same viewpoint which led committal to be classified as civil permits local authorities to act based on conclusions about debtors drawn from the surface level; if something is called civil it must be civil, if someone has an income source, they must be able to pay their arrears. This overlaps with the conceptual simplifications discussed above and has the effect of cutting off

⁷²⁷ Rock (n 137) 189.

opportunities for engagement with debtors based on their individual circumstances. As suggested by Lipsky:

‘The routinization of inquiry minimizes the extent to which street-level bureaucrats can discover unique circumstances requiring flexible responses. Thus, we have the ingredients for another self-fulfilling prophecy. In the expectation that most clients will fall into previously defined categories, bureaucracies follow search procedures based on that expectation. Having constricted the kinds of information they receive, street-level bureaucrats find confirmation that, indeed, clients tend to fall into certain well-defined categories.’⁷²⁸

Once information is found which confirms this suspicion, even evidence to the contrary may fail to change the conceptual labelling applied to that debtor, with ‘all evidence seeming to confirm the original diagnosis.’⁷²⁹ The same phenomenon was seen in Chapter Five, where evidence presented during multiple hearings such as offers to pay arrears, was disregarded, and the individuals were imprisoned regardless. Their fear of being duped caused, and will continue to cause, a hyper-vigilance and a motivation to identify evidence of dishonesty.⁷³⁰

Although most interview participants and respondents to the public consultations had accepted the removal of committal, and others stated that they had pre-empted its removal, there was an undeniable sense that local authorities felt exposed to risk by this reduction in their powers and were adamant that it must be replaced. In addition to the requests for greater information rights, the most common replacement suggested for committal across the public consultation responses and interviews was some form of community order, which retains the hybridity of criminal and civil law and the deterrent effect. Despite the criticisms that have been made of using a criminal sanction to enforce a civil debt, we can see the extent to which local

⁷²⁸ Lipsky (n 460) 122.

⁷²⁹ Lipsky (n 460) 68.

⁷³⁰ Halliday (n 452) 739.

authorities 'equate what exists with what is best'.⁷³¹ The consensus on community orders is the best example of how entrenched the perception has become that council tax requires a punitive sanction in order to achieve an effective enforcement system. This desire for punitive sanctions is enabled in the context of council tax enforcement by the recent history of non-payment of its predecessor, the community charge, contrasted against the relatively high collection rates enjoyed by council tax whilst the sanction of imprisonment was available, leading to a deeply ingrained bias in favour of punitive sanctions. This bias persists despite not being objectively justifiable in law or economics. In terms of law, this is shown by the unacceptable lack of procedural protections available to debtors as a result of the hybrid nature of the committal process, and the frequency of significant judicial errors leading to wrongful imprisonment (Chapters Four and Five). In terms of economics, we have seen the incomplete justifications of local authorities in both the public consultation and in interviews which omit the cost of punitive enforcement action from their calculations of committal's efficacy, as well as the cost of knock-on effects on the debtor's family or social circle (Chapters Six and Seven). The lack of legal or economic justification highlights the role of emotional responses in street-level work. In much the same way that the committal process wore the apparel of a civil law system for several decades, local authorities wear the apparel of pure rationality, but in reality, their reactions and decisions are always informed by an emotional element.⁷³² As cautioned by Lipsky, 'without changes in the work structure one ought to expect that biases will soon develop in other areas, or that the old biases will soon emerge in new forms in the absence of considerable vigilance.'⁷³³ Community orders create a new vessel for local authority staff as street-level bureaucrats to maintain a punitive civil sanction and preserve the status quo.

In this chapter we have discussed what the empirical sources suggest about how committal was defined in law, what impact this had procedurally, and why the decision was taken to remove the sanction of committal. We also identified a number

⁷³¹ Lipsky (n 460) 144.

⁷³² Halliday (n 452) 740.

⁷³³ Lipsky (n 460) 156.

of mechanisms, evidenced by reference to public consultation responses and interview transcripts, which informed, and will continue to inform, the decision-making processes of local authorities; these include judgements or stereotypes about debtors, an error preference for risking denying a benefit to someone who deserves it, a culture of disbelief, confirmation bias in relation to interpretation of evidence and an entrenched desire for punitive sanctions to act as a deterrent. It is submitted that none of these mechanisms are rational or warranted but arise in the emotional responses of street-level bureaucrats.⁷³⁴ The overarching argument of Lipsky's street-level bureaucrat concept was that the 'accretion of many low-level decisions...effectively determine policy within the parameters established by authorities.' Therefore, these emotional responses form part of the development of council tax policy from the bottom-up, notwithstanding changes made from the top-down, and must not be ignored or diminished in future decisions about the reform of this area of law. Because these mechanisms and shortcuts are caused by the chronically inadequate resources of local authorities, they are akin to survival mechanisms, and are therefore not easily abandoned or changed.⁷³⁵

⁷³⁴ Halliday (n 452).

⁷³⁵ Lipsky (n 460) 187.

CONCLUSION

The enforcement of council tax arrears is now undoubtedly improved in terms of its legal status and procedural fairness because of the removal of the sanction of imprisonment. Committal was a highly problematic hybrid of civil and criminal law, which disadvantaged debtors in multiple ways and allowed individuals to be wrongly imprisoned. The data which informs this thesis suggests that committal was not economically justified, and although the impact of the Covid-19 pandemic has hindered interpretation of collections data, it does not seem that there has been a significant drop in collection rates since its removal, especially given the suspension of enforcement action during the pandemic which ran parallel with the first few years of data on collection rates following the removal of committal. For these reasons, any future mechanisms for the legal enforcement of council tax arrears should only use the fixings of the civil law, with enforcement solely against assets, to avoid the unacceptable lack of procedural protections which occurred when a hybrid sanction was permitted.

In the course of conducting this research, the design of council tax as a form of local government taxation has been questioned, with the Welsh Government commissioning extensive research into alternative forms of taxation. These have included Land Value Tax, a system linked to the value of land which disregards property value, structure, plant or machinery which exist on it, focusing on the desirability of location, size of land and permitted uses.⁷³⁶ My own research for the Welsh Government also considered the option of a Local Income Tax, where the amount payable is based on the household's ability to pay.⁷³⁷ Both of these options could allow the basis of the tax to be more progressive, reducing the likelihood of arrears because bills will correlate better (although never perfectly) with means. This

⁷³⁶ 'Reforming Local Government Finance in Wales: Summary of Findings' (n 15); Rhys ap Iwylim, Edward Jones and Helen Rogers, 'A Technical Assessment of the Potential for a Local Land Value Tax in Wales' (Welsh Government 2020) 17/2020.

⁷³⁷ '[Reforming Local Government Finance in Wales: Summary of Findings](#)' (Welsh Government 2021) 28; Jennie Bunt, 'An Assessment of the Feasibility of a Local Income Tax to Replace Council Tax in Wales' (Welsh Government 2020) 74/2020.

reminds us of the importance of the design of tax systems for them to be affordable and therefore require minimal enforcement action. At present, the Welsh Government are consulting on plans to conduct a revaluation exercise under the current council tax system, which may mean Bands are a better reflection of current house values but will not rectify the intrinsic regressivity of council tax.⁷³⁸

Looking to the future, this thesis demonstrates that there is a need for more qualitative research and understandings of council tax enforcement, and debt more generally, in response to the privileging of quantitative research and numerical data discussed throughout this thesis. There is of course a place for quantitative data, but it must be complemented by qualitative evidence of assumptions, processes and decisions which underpin the implementation of legal systems. Qualitative research methods would necessitate greater access to frontline work which is currently severely lacking in this area. In addition, caution should be exercised in overprioritizing assessments of the rational elements of enforcement work, with greater room made for appreciation of the impact of emotions. In focusing on the emotional elements of decision-making I do not advocate for a de-emotionalisation of council tax enforcement, as street-level bureaucrats will never be entirely rational actors, but for any future legal reforms to be informed by holistic research which gives equal weight to the emotional and rational influences which persist even when there is significant legal reform.

Crucially, it should be acknowledged that local authorities have the skills and experience to conduct fair enforcement if they are given adequate resources to do so. The interview transcripts contained many examples of pragmatic and welfare-focused debt enforcement practices, but it is simply not possible under present conditions to replicate this approach for all individuals who fall into arrears. As argued by Halliday, 'we cannot hope for an emotionally healthy implementation of law unless the conditions permit it.'⁷³⁹ All of the mechanisms and conceptual shortcuts identified above can be directly linked to the chronically inadequate resources which

⁷³⁸ <https://gov.wales/fairer-council-tax> [accessed 15 November 2022].

⁷³⁹ Halliday (n 452) 745.

local authorities work within, made worse by the context of austerity. More broadly, the findings of this research can be seen as consistent with the increasingly punitive attitudes to the poor preceded by the 2008 financial crisis.⁷⁴⁰ Any criticism of the work of local authorities, as with any criticism of advocacy research, should always be seen as a product of, and exacerbated by, this extremely challenging context. Local authorities understand the realities of poverty in their communities and should be supported to develop enforcement practices which keep debtors engaged in long-term solutions, rather than being encouraged to create efficiency through technology or by increased access to official information which may not be objectively interpreted. It is hoped that the findings of this thesis can contribute to the development of what Lipsky envisioned: 'a supportive environment...in the working out of problems of practice.'⁷⁴¹

In studying an area of law which has recently been reformed there is a temptation to reach overly optimistic conclusions about the future fairness of the law, particularly where the legal mechanism that has been repealed was controversial. With this in mind, I have used concepts and empirical evidence to demonstrate that, even without the option to imprison council tax debtors in Wales, the dominant idea that punitive sanctions for non-payment are a necessity may persist. The aim in doing so is to encourage caution in future reforms, such as the introduction of new enforcement powers or the extension of current powers, lest we re-introduce a punitive sanction in an alternative form, continuing the problematic hybrid of criminal and civil law. It is submitted that the ultimate goal of council tax enforcement should be to achieve a system where decisions are fair and appropriate in each individual case, promoting long-term financial stability for both the local authority and the indebted individual, and less concerned with the indirect influence of enforcement decisions on the rest of the population. A fair enforcement system requires trust that in the vast majority of cases, people will pay what they can, and that deliberate evasion of council tax is vanishingly rare. This trust, coupled with adequate resources for local authorities to complete their work, has the capacity to produce a fair and

⁷⁴⁰ Newman and Robins (n 248) 453.

⁷⁴¹ Lipsky (n 460) 206.

efficient system of local government finance which is mutually beneficial to creditor and debtor, and to make the misery of imprisonment for debt, and the ideas that justified it, relics of history.

Appendix One - Standard Liability Order Template

On the complaint of [] that the sum of £[] is due from the defendant to the complainant under Part V of the Council Tax (Administration and Enforcement) Regulations 1992 and is outstanding, it is adjudged that the defendant is liable to pay the aggregate amount specified below, and it is ordered that the amount may be enforced in the manner mentioned in Part VI of those Regulations accordingly.

Appendix Two - Standard Warrant of Commitment

A liability order (“the order”) was made in respect of the debtor by the [] Magistrates’ digital Court on [] under Regulation 34 of the Council Tax (Administration and Enforcement) Regulations 1992 (“the Regulations”).

The court is satisfied –

That the [billing authority] (“the authority”) sought under Regulation 45 of the Regulations to levy by distress the amount then outstanding in respect of which the order was made of [], together with charges determined in accordance with Schedule 5 to the Regulations of []:

That the authority has been unable to levy that amount by distress

That the debtor has attained the age of 18 years; and

Having inquired in the debtor’s presence as to his means and as to whether failure to pay which has led to the application for a warrant of commitment is due to his wilful refusal or culpable neglect, that it was due to such wilful refusal or culpable neglect.

The decision of the court is that the debtor be [committed to prison] [OR] [detained] for [] unless the aggregate amount mentioned below in respect of which this warrant is made is sooner paid.

And you [] are hereby require to take the debtor and convey him to [] and there deliver the debtor to the [governor] [OR] [officer in charge] thereof; and you, [governor] [OR] [officer in charge], to receive the debtor into your custody and keep the debtor for [] from the debtor’s arrest under this warrant of until the debtor be sooner discharged in due course of law.

Appendix Three - Woolcock Chronology

1 April 2009 – 21 April 2013: Ms Woolcock resident at Flat 3, Precinct Rest Bay, Porthcawl and failed to pay council tax, total value including costs £3,992.78.

22 March 2013 – 31 March 2014: Ms Woolcock resident at 1 Seagull Close, Porthcawl and failed to pay council tax, total value including costs £1,748.97.

14 August 2014: Bridgend Magistrates' court issued two committal summonses to Ms Woolcock in response to applications by Bridgend County Council for a warrant of committal to prison. The summons required Ms Woolcock to attend Bridgend Magistrates' Court on 22 September 2014.

22 September 2014: Ms Woolcock failed to attend court, and an arrest warrant was issued.

[GAP IN CHRONOLOGY UNCLEAR BUT ASSUMED TO BE CORRECT]

20 October 2015: Ms Woolcock attended a hearing at Bridgend Magistrates' Court, represented by a duty solicitor. She advised her solicitor that she had struggled with her household bills and had prioritised paying rent, utilities and for food. In a handwritten note written by the magistrate's clerk it was recorded that Ms Woolcock suffered from depression, worked part-time in a sports shop but was not well enough to work, was a single parent in receipt of Child Tax Credit and Child Benefit but was intending to apply for additional benefits. It was agreed that she would pay £10 a week towards her arrears. It is noted that she accepted that she was guilty of culpable neglect. The court issued a committal order with a sentence of 85 days which was suspended on the basis that she would maintain the payment arrangement. Ms Woolcock maintained this agreement for some months, but then stopped making payments.

25 May 2016: Bridgend County Council wrote to Ms Woolcock to give her notice that if she did not pay £50 they would apply for her immediate committal to prison.

10 June 2016: Ms Woolcock was given notice that the Magistrates' court had been informed of her breach of the suspended order and she would be committed if she did not pay the total amount outstanding (£4,536). She was also given notice of a hearing on 18 July 2016 where the court would consider whether to issue the warrant of committal, which she should attend. Ms Woolcock stated in her witness statement that she did not receive either of the letters of 25 May or 10 June.

18 July 2016: Ms Woolcock did not attend the hearing. Bridgend Magistrates' court committed her to prison in her absence for 81 days on the basis of culpable neglect.

5 August 2016: Ms Woolcock made a payment of £100 to Bridgend County Council.

8 August 2016: Bailiffs attended Ms Woolcock's home to arrest her. She told them about her recent payment but was told it was too late. Police attended and took her to Bridgend police station and onward to HMP Eastwood. Ms Woolcock was given some time to telephone her mother to ask her to look after her 17-year-old son.

16 September 2016: Ms Woolcock made an urgent application to the Administrative Court for interim relief in the form of bail. This was granted and directions were given for applications for judicial review of the orders of 20 October 2015 and 18 July 2016 to be heard as soon as possible.

31 October 2016: the case was transferred to the Administrative Court in Wales.

9 November 2016: judicial review claim heard at Cardiff Civil Justice Centre by Mr Justice Lewis. Grounds of challenge in relation to the order of 20 October 2015:

There was no proper inquiry into the Claimant's means or the reasons for her failure to pay;

There was no consideration of alternatives to committal;

The conditions of postponement of the committal were unreasonable;

The terms of imprisonment fixed in default of payment were manifestly excessive;

There was no consideration of the impact of the orders upon Ms Woolcock's son and the making of the orders involved a breach of Art 8 ECHR.

Grounds of challenge in relation to warrant of committal issued on 18 July 2016:

There was no proper consideration of alternatives to activating the committal order;
There was no consideration of the impact of the orders upon the Claimant's son and the committal involved a breach of Art 8 ECHR.

There was an 8th ground of challenge that the committal procedure itself as contained in the relevant statutory instrument was inherently unfair and unlawful. Notice of this claim was served on the Secretary of State for Communities and Local Government, who confirmed in correspondence on 8 November 2016 that it would not be possible to respond by the hearing on the following day, asking for directions that the Claimant confirm that she wished to proceed with this claim and to file amended grounds. At the hearing, the claimant confirmed she did not wish to proceed with ground 8 at that hearing but required directions to be set for its future consideration.

Mr Justice Lewis concluded that the orders of 20 October 2015 were unlawful because of a failure to conduct an adequate means inquiry which meant the court could not make conclusions about culpable neglect or apply their mind to the issue of remitting some of the debt. The period of the suspended order was also deemed to be excessive and disproportionate. Because the committal of Ms Woolcock was based on the unlawful orders of 20 October 2015 it was unlawful and quashed.

18 January 2017: the judgment was given in Woolcock (No 1).

12 April 2017: Mr Justice Lewis permitted Ms Woolcock to proceed with the 8th ground of challenge.

18-19 December 2017: hearing took place in QBD of High Court, for Lord Justice Hickinbottom and Mr Justice Lewis.

Lord Justice Hickinbottom concluded that the claim as defined did not fall within the scope of judicial review and, insofar as it might, the claimant had not proved that there was anything inherent in the system of enforcement of council tax liability that means that the system (or any part of it) is unlawful as giving rise to an unacceptable risk of procedural unfairness.

Appendix Four – Participant Materials

Recruitment Email (Bilingual)



FAO Council Tax Department
Cardiff Council
PO BOX 9000
Cardiff
CF10 3WD

TITLE OF RESEARCH: **The influence of the sanction of committal on enforcement of council tax arrears in Wales.**

FUNDING BODY: **Economic and Social Research Council**

RESEARCHER: **Jennie Bunt**

CONTACT DETAILS: **Cardiff School of Law and Politics**
Cardiff University
Law Building
Museum Avenue
Cardiff CF10 3AX
Email Address: BuntJL1@cardiff.ac.uk

Dear Sir/Madam,

I write to invite you to participate in a research project which considers the impact of the removal of committal as a sanction for council tax arrears from April 2019. I am a doctoral student of Cardiff University School of Law and Politics and would be interested in arranging an interview with a member of staff of your council tax

enforcement department. The purpose of the interview would be to discuss experiences of the council tax enforcement system since the removal of committal. This would be an opportunity to provide feedback on the changes to the law of council tax enforcement in Wales.

Further details of the proposed research are contained within the attached Information Sheet. If, having considered the Information Sheet, you have any questions at all, please do not hesitate to contact me.

I look forward to hearing from you.

Yours faithfully,

Jennie Bunt⁷⁴²

'Dylanwad sancsiwn traddodi i'r carchar ar orfodi ôl-ddyledion treth y cyngor yng Nghymru'

Annwyl Syr/Fadam,

Rwy'n ysgrifennu i'ch gwahodd i fod yn rhan o brosiect ymchwil sy'n ystyried effaith dileu traddodi i'r carchar fel sancsiwn ar gyfer ôl-ddyledion treth y cyngor o fis Ebrill 2019. Rwy'n fyfyrwr doethurol yn Ysgol y Gyfraith a Gwleidyddiaeth Prifysgol Caerdydd, a byddai gen i ddiddordeb mewn trefnu cyfweiliad gydag aelod o staff yn eich adran gorfodi treth y cyngor. Diben y cyfweiliad fyddai trafod profiadau o'r system gorfodi treth y cyngor ers i draddodi i'r carchar gael ei ddileu. Byddai hwn yn gyfle i roi adborth ar y newidiadau diweddar i gyfraith gorfodi treth y cyngor yng Nghymru.

⁷⁴² My maiden name.

Ceir manylion pellach am yr ymchwil arfaethedig yn y Daflen Wybodaeth atodol.

Os bydd gennych chi unrhyw gwestiynau ar ôl rhoi sylw i'r Daflen Wybodaeth, mae croeso i chi gysylltu â mi.

Edrychaf ymlaen at glywed oddi wrthyich.

Yn gywir,

Jennie Bunt

Participant Information Sheet (Bilingual)



Please note, the following information is available in Welsh below.

TITLE OF RESEARCH: **The influence of the sanction of committal on enforcement of council tax arrears in Wales.**

FUNDING BODY: **Economic and Social Research**

Council RESEARCHER: **Jennie Bunt**

CONTACT DETAILS: **Cardiff School of Law and Politics**
Cardiff
University Law
Building
Museum
Avenue Cardiff
CF10 3AX
Email Address: BuntJL1@cardiff.ac.uk

Who is doing the research?

The principal researcher for this project will be Jennie Bunt, a doctoral student at Cardiff University School of Law and Politics. Jennie is supervised by Dr Wendy Kennett and Dr Thomas Hayes.

What is the purpose of the research?

The purpose of this project is to increase understanding of debt enforcement as a legal process. The research will take the form of a case study which will focus on the enforcement of council tax arrears by the twenty-two local authorities of Wales. In particular, I am interested to understand more about the use of committal to prison as a sanction for council tax arrears under Regulation 47 of the Council Tax (Administration and Enforcement) Regulations 1992. As you will know, this sanction was removed by the Welsh Government in April 2019 following a public consultation on its suitability. Although it is rarely used, I am interested to find out more about the situations in which it has been used to date and why in those situations it was felt to be appropriate and proportionate in all of the circumstances. Given that it is often the last resort of a local authority seeking to recover arrears of council tax, I am also interested to investigate how its removal will influence the wider enforcement system.

Interviews will be conducted in person, by telephone or Skype. If an interview in person is preferable, I am able to travel to your location. Please be aware that I am not able to conduct interviews or respond to emails in Welsh.

Once I have conducted all of the interviews, I will analyse the interview responses in detail to highlight key themes and trends. In doing so I hope to develop recommendations for how the legal framework of council tax enforcement may be developed and improved to assist local authorities in collecting as much council tax as possible for community investment whilst safeguarding the welfare of citizens of Wales who may be struggling financially.

Who is being invited to participate?

Members of staff of council tax enforcement departments across all the twenty-two local authorities in Wales.

What type of information will be gathered during interviews?

I intend to conduct interviews with employees of local authority council tax departments to discuss their experiences of the enforcement system following the removal of the option of committal as a sanction in April 2019. These interviews should last no longer than one to two hours. During the interviews I would be interested in discussing topics such as your day to day role in council tax enforcement, the targets and objectives you are set, how effective you feel in your role without the option to apply for committal and any recent changes to your internal systems or general approach to council tax collections. The interviews will be relatively informal and should be seen as an opportunity for you to provide feedback on the decision of the Welsh Government to remove committal and how this has affected the work of council tax enforcement teams. As a participant, you will not be expected to and should avoid referring to or disclosing the personal details of any third parties during the course of our discussions, including during the interview and in any other communications.

What happens if I wish to withdraw?

Should you decide to participate in this research you remain free to withdraw at any stage and for any reason. After interviews have been conducted, you may request the withdrawal of your data from the project up to and until 31 August 2020. Your data will be destroyed as soon as practically possible, and certainly not longer than twenty-eight working days following the receipt of a request to withdraw.

Confidentiality and privacy: what will happen to my data?

Interviews will be conducted in person where possible, but otherwise by telephone or Skype. The information and insights you share during the interview will be recorded in this research. If you agree, interviews will be recorded via a digital recording device. The services of a professional transcription service will be used to transcribe the content of the interviews for analysis. After our interview is finished the audio file and electronic copies of the interview transcripts will be stored on a registered Cardiff University computer that will be password controlled and will be used for research purposes only. Paper copies of the interview transcripts will be stored in a locked filing cabinet.

I do not intend to personally identify you in the interview. With your consent, I intend to refer to the name of the local authority which employs you and to provide a description of your job title and general responsibilities. Please be aware that it is not possible to guarantee your anonymity as a participant.

The interview transcripts will be used as data to support my doctoral thesis. This will include verbatim quotes and summaries of interview responses to support the conclusions of my research. I also intend to present, publish and discuss the research results at academic conferences and industry events and in publications such as journals, books and reports. The data will not be retained for any longer than is necessary for the purpose of academic research and dissemination.

Please refer to Appendix 1 which contains Cardiff University's Research Participant Data Protection Notice.

| Additional Contact Information | |
|---------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Researcher's Supervisor | <p>Dr Wendy Kennett Cardiff School of Law and Politics Cardiff University Law Building Museum Avenue Cardiff CF10 3AX KennettW@cardiff.ac.uk</p> |
| Cardiff School of Law and Politics Research Ethics Committee (SREC) | <p>This project has received ethical approval from the Cardiff School of Law and Politics Research Ethics Committee (SREC) on 27/06/2019 (Internal Reference: SREC/180619/13).</p> <p>The Cardiff School of Law and Politics Research Ethics Committee (SREC) can be contacted at:</p> <p>School Research Officer Cardiff School of Law and Politics Cardiff University Law Building Museum Avenue Cardiff CF10 3AX Email: LAWPL-Ethics@cardiff.ac.uk</p> |

Taflen Wybodaeth i Gyfranogwyr

TEITL YR YMCHWIL: Dylanwad sancsiwn traddodi i'r carchar ar orfodi ôl-ddyledion

treth y cyngor yng Nghymru.

CORFF ARIANNU: Y Cyngor Ymchwil Economaidd a

Chymdeithasol YMCHWILYDD: Jennie Bunt

MANYLION CYSWLLT: Ysgol y Gyfraith a Gwleidyddiaeth Caerdydd

Prifysgol Caerdydd

Adeilad y Gyfraith

Rhodfa'r

Amgueddfa

Caerdydd CF10

3AX

Cyfeiriad e-bost: BuntJL1@cardiff.ac.uk

Pwy sy'n gwneud y gwaith ymchwil?

Prif ymchwilydd y prosiect hwn fydd Jennie Bunt, myfyriwr doethurol yn Ysgol y Gyfraith a Gwleidyddiaeth, Prifysgol Caerdydd. Mae Jennie yn cael ei goruchwylio gan Dr Wendy Kennett a Dr Thomas Hayes.

Beth yw diben yr ymchwil?

Diben y prosiect hwn yw cynyddu dealltwriaeth o orfodi dyledion fel proses gyfreithiol. Bydd yr ymchwil ar ffurf astudiaeth achos a fydd yn canolbwyntio ar orfodi

ôl-ddyledion treth y cyngorgan y 22 awdurdod lleol yng Nghymru. Yn arbennig, mae gen i ddiddordeb mewn gwybod mwy am ddefnyddio traddodi i'r carchar yn sancsiwn ar gyfer ôl-ddyledion treth y cyngor o dan Reoliad 47 o Reoliadau (Gweinyddu a Gorfodi) Treth y Cyngor 1992. Fel y gwyddoch, cafoddy sancsiwn hwn ei ddileu gan Lywodraeth Cymru ym mis Ebrill 2019, yn dilyn ymgynghoriad cyhoeddus ar ei addasrwydd. Er mai anaml y caiff ei ddefnyddio, mae gen i ddiddordeb mewndysgu mwy am y sefyllfaoedd lle cafodd ei ddefnyddio hyd yma, a pham y teimlwyd, yn y sefyllfaoedd hynny, ei fod yn briodol ac yn gymesur o dan bob un o'r amgylchiadau. Gan maidyma'r cam a gymerir yn aml gan awdurdod lleol wedi i bopeth arall fethu, er mwyn adennill ôl-ddyledion treth y cyngor, mae gen i ddiddordeb hefyd mewn ymchwilio sut bydd ei ddileu yn dylanwadu ar y system orfodi ehangach.

Cynhelir y cyfweiliadau wyneb yn wyneb, dros y ffôn neu drwy Skype. Os yw cyfweiliad wynebyn wyneb yn well gennych, gallaf deithio i'ch lleoliad. Nodwch, nid oes modd i'r ymchwilydd gynnal cyfweiliadau nac ymateb i e-byst yn y Gymraeg.

Wedi i mi gynnal yr holl gyfweiliadau, byddaf yn dadansoddi ymatebion y cyfweiliadau yn fanwler mwyn amlygu themâu a thueddiadau allweddol. Wrth wneud hynny, rwy'n gobeithio datblygu argymhellion ar gyfer sut gall fframwaith cyfreithiol gorfodi treth y cyngor gael ei ddatblygu a'i wella i gynorthwyo awdurdodau lleol i gasglu cymaint o dreth y cyngor â phosibler mwyn buddsoddi yn y gymuned, ochr yn ochr â diogelu lles dinasyddion Cymru a all fod yncael trafferth ymdopi'n ariannol.

Pwy sy'n cael gwahoddiad i gymryd rhan?

Aelodau staff adrannau gorfodi treth y cyngor ar draws pob un o'r 22 awdurdod lleol yng Nghymru.

Pa fath o wybodaeth a gesglir yn ystod y cyfweiliadau?

Rwy'n bwriadu cynnal cyfweiliadau gyda chyflogeion adrannau treth y cyngor awdurdodau lleoli drafod eu profiadau o'r system orfodi wedi i draddodi i'r carchar gael ei ddileu fel sancsiwn ym mis Ebrill 2019. Ni ddylai'r cyfweiliadau hyn bara'n hwy nag un i ddwy awr. Yn ystod y cyfweiliadau byddai gen i ddiddordeb mewn trafod pynciau fel eich rôl chi o ddydd i ddydd wrthorodi treth y cyngor, y targedau a'r amcanion sy'n cael eu gosod ar eich cyfer, pa mor effeithiol rydych chi'n teimlo yn eich rôl heb fedru gwneud cais am draddodi i'r carchar, ac unrhyw newidiadau diweddar i'ch systemau mewnol neu eich agwedd gyffredinol at gasglu treth y cyngor. Bydd y cyfweiliadau'n gymharol anffurfiol, a dylech eu gweld fel cyfle i chi roi adborth ar benderfyniad Llywodraeth Cymru i ddileu opsiwn traddodi i'r carchar a sut mae hynny wedieffeithio ar waith timau gorfodi treth y cyngor. Fel cyfranogwr, ni fydd disgwyl i chi gyfeirio at fanylion personol unrhyw drydydd parti, a dylech osgoi gwneud hynny na'u datgelu yn ystod ein trafodaethau, gan gynnwys yn ystod y cyfweiliad, ac mewn unrhyw gyfathrebu arall.

Beth fydd yn digwydd os wyf am dynnu'n ôl?

Os penderfynwch fod yn rhan o'r gwaith ymchwil hwn, byddwch yn dal yn rhydd i dynnu'n ôl ar unrhyw adeg ac am unrhyw reswm. Ar ôl i'r cyfweiliadau ddod i ben, gallwch ofyn am dynnueich data allan o'r prosiect hyd at 31 Awst 2020. Bydd eich data'n cael ei ddinistrio cyn gyntedag sy'n ymarferol bosibl, ac yn sicr cyn pen 28 diwrnod gwaith ar ôl derbyn cais i dynnu'n ôl.

Cyfrinachedd a phreifatrwydd: beth fydd yn digwydd i'm data?

Cynhelir y cyfweiliadau wyneb yn wyneb lle bynnag y bo modd, ond fel arall dros y ffôn neu drwy Skype. Cofnodir yr wybodaeth a'r sylwadau y byddwch yn eu rhannu yn ystod y cyfweiliad yn yr ymchwil hon. Os byddwch chi'n cytuno, caiff y cyfweiliadau eu recordio â dyfais recordiodigidol. Defnyddir gwasanaeth trawsgrifio proffesiynol i

drawsgrifio cynnwys y cyfweiliadau er mwyn ei ddadansoddi. Ar ôl gorffen y cyfweiliad, bydd y ffeil sain a chopïau electronig o drawsgrifiadau'r cyfweiliad yn cael eu storio ar un o gyfrifiaduron cofrestredig Prifysgol Caerdydd, a reolir â chyfrinair, ac a ddefnyddir at ddibenion ymchwil yn unig. Bydd copïau papur o drawsgrifiadau'r cyfweiliadau yn cael eu storio mewn cwpwrdd ffeilio dan glo.

Nid yw'n fwriad gen i nodi pwy ydych yn bersonol yn y cyfweiliad. Gyda'ch cydsyniad, rwy'n bwriadu cyfeirio at enw'r awdurdod lleol sy'n eich cyflogi, a darparu disgrifiad o deitl eich swydd a'ch cyfrifoldebau cyffredinol. Dylech fod yn ymwybodol nad yw'n bosibl gwarantu eich bod yn gyfranogwr di-enw.

Defnyddir trawsgrifiadau'r cyfweiliadau yn ddata i gefnogi fy thesis doethurol. Bydd hynny'n cynnwys dyfyniadau gair am air a chrynodebau o ymatebion i'r cyfweiliadau i gefnogi casgliadau fy ngwaith ymchwil. Mae hefyd yn fwriad gen i gyflwyno, cyhoeddi a thrafod canlyniadau'r ymchwil mewn cynadleddau academaidd a digwyddiadau diwydiannol, ac mewncyhoeddiadau megis cyfnodolion, llyfrau ac adroddiadau. Ni chedwir y data'n hwy nag sy'n angenrheidiol at ddibenion ymchwil academaidd a lledaenu.

Cyfeiriwch at Atodiad 1 sy'n cynnwys Hysbysiad Diogelu Data Prifysgol Caerdydd i Gyfranogwyr Ymchwil.

Manylion cyswilt ychwanegol:

Goruchwyliwr yr Ymchwilydd

Dr Wendy Kennett
Ysgol y Gyfraith a Gwleidyddiaeth Caerdydd
Prifysgol Caerdydd
Adeilad y Gyfraith
Rhodfa'r Amgueddfa
Caerdydd CF10 3AX
KennettW@cardiff.ac.u
[k](#)

Pwyllgor Moeseg Ymchwil Ysgol y Gyfraith a Gwleidyddiaeth Caerdydd (SREC)

Mae'r prosiect hwn wedi cael sêl bendith Pwyllgor Moeseg Ymchwil Ysgol y Gyfraith a Gwleidyddiaeth Caerdydd ar 27/06/2019 (Cyfeirnod mewnol: SREC/180619/13).

Mae modd cysylltu â Phwyllgor Moeseg Ymchwil Ysgol y Gyfraith a Gwleidyddiaeth Caerdydd trwy:

Swyddog Ymchwil yr Ysgol
Ysgol y Gyfraith a Gwleidyddiaeth Caerdydd
Prifysgol Caerdydd
Adeilad y Gyfraith
Rhodfa'r Amgueddfa
Caerdydd CF10 3AX
E-bost: LAWPL-Ethics@cardiff.ac.uk

Research participants data protection notice

This general notice sets out how the University deals with the personal information of individuals who participate in University-led research projects. You should read this notice alongside the participant information sheet provided to you by the research team.

We may update this information from time to time to ensure continued compliance with current legislation and to reflect best practice.

In the unlikely event that there is any contradiction between this general information and the specific participant information sheet that you will be provided with by the researcher, the specific participant information sheet takes precedence

Identity of the Data Controller

As a Data Controller, Cardiff University is legally responsible for processing your personal data in accordance with data protection legislation. In order to carry out its research functions it is necessary for the University to collect, store, analyse and otherwise process your personal data.

The University is registered as a Data Controller with the Information Commissioner's Office (ICO) to process personal data for research purposes. [Reg no Z6549747](#).

What personal information do we collect about you?

All research projects are different and the information we collect will vary. You will

be provided with a participant information sheet which will specify the personal data that we need to collect from you for the research project. Researchers will only collect information that is essential for the purpose of the research.

Some data (such as survey data) is frequently collected anonymously so cannot be withdrawn once you have given permission for it to be used. Where you may be identifiable in a research publication (such as an attributable quote or a photograph), we will seek your explicit consent.

What is our legal basis for processing your personal data?

Under Data Protection law we are required to specify the legal basis we are relying on to process your personal data.

Cardiff University is a public research institution established by [royal charter](#) to advance knowledge and education through its teaching and research activities. As such, personal data is processed on the basis that doing so is necessary for our public task, is for scientific and historical research purposes which are in the public interest, and is subject to necessary safeguards.

Note that the legal basis on which your personal data is processed under data protection law is separate from ethical consent requirements and any common law duty of confidentiality that may apply.

Research in the University is governed by policies and procedures and all research involving human participants undergoes ethical scrutiny to ensure that the research is conducted in a manner that protects participants. For more information see our [Integrity and Ethics pages](#).

For what purpose will your information be used?

The purposes of the research study will be set out in the participant information sheet that you will receive from the researcher prior to agreeing to take part in the research. This will detail the specific research study or project you are participating in and (where applicable) the sources of data that might be used, any data sharing or international transfer arrangements, and any automated decision-making that affects you.

Who will have access to your data and how will it be secured?

To communicate our research to the public and the academic community your anonymised data is likely to form part of a research publication or conference presentation or public talk. Where researchers wish to use any information that would identify you, specific consent will be sought.

The privacy of your personal data is paramount and will not be disclosed unless there is a justified purpose for doing so. The specific security arrangements for any personal data you provide will be included as part of the participant information sheet and will also be covered by the [University Information Security Policies](#).

Your personal data may be shared with project team members who are authorised to work on the project and access the information. This may include staff at Cardiff University or collaborators at other organisations. This will be clearly identified in

your participant information sheet.

Where necessary, your personal data may also be made available in confidence to auditors or to the named person in the case of allegations of research misconduct outlined in

our [Procedures for Dealing with Allegations of Misconduct in Academic Research](#).

How long will your information be held?

The participant information will provide details about the long-term use (and, where applicable, re-use) and retention of your personal information in connection with the specific research study or project you are participating in. If a study is funded the research funder will usually define the period of time for which data will be kept. Otherwise it will be kept in accordance with the University's [Records Management Policy and Records Retention Schedules](#) for a specified period of time after your research participation with us ceases.

Research data is normally anonymised as quickly as possible after data collection so that individuals cannot be identified and your privacy is protected. You will not be able to withdraw your data after this point.

In addition to data we collect from you or generate through interactions with you as part of the research activity, we will also hold your personal data within project governance documentation (in particular participant agreements or consent forms) and records of any communications with you through email or letter. These will usually need to be retained for audit purposes even if you decide not to take part or withdraw from participation at a later date.

Your data protection rights

There are various rights under data protection legislation details of which can be found on the [rights webpage](#). Note that your rights to access, change or move your information are limited, as we need to manage your information in specific ways in order for the research to be reliable and accurate. If you withdraw from the study, we may need to keep the information about you that we have already obtained. To safeguard your rights, we will use the minimum personally-identifiable information possible and we will always try to respond to concerns or queries you may have and comply with your wishes as far as possible.

Do we transfer information outside the European Economic Area (EEA)?

It will be made clear in the participant information sheet whether it is necessary to transfer your personal data outside of the EEA. If it is necessary to transfer your personal data outside of the EEA we will take steps to ensure that appropriate security measures are taken to protect your privacy rights such as imposing contractual obligations on the recipient or ensuring that the recipients are subscribed to 'international frameworks' that aim to ensure adequate protection (for example, "[Privacy Shield](#)" in the USA). Technical measures such as encryption will also be considered.

How to raise a query, concern or complaint

If you have any queries or concerns about how your personal data will be used during the research project you should contact the lead researcher. Their details will have been provided in the participant information sheet.

If you still have queries, concerns or wish to raise a complaint, details of how you can contact the University Data Protection Officer and the Information Commissioner's

Office are available on our [Data protection](#) page.

Hysbysiad diogelu data cyfranogwyr ymchwil

Mae'r hysbysiad cyffredinol hwn yn nodi sut mae'r Brifysgol yn ymdrin â gwybodaeth bersonol yr unigolion sy'n cymryd rhan mewn prosiectau ymchwil a arweinir gan y

Brifysgol. Dylech ddarllen yr hysbysiad hwn ochr yn ochr â'r ddalen wybodaeth i gyfranogwyr a roddwyd i chi gan y tîm ymchwil.

Efallai y byddwn yn diweddarar'r wybodaeth hon o bryd i'w gilydd i wneud yn siŵr ein bod yn parhau i gydymffurfio â'r deddfwriaeth gyfredol ac i adlewyrchu arfer gorau.

Os bydd yr wybodaeth gyffredinol hon â'r daflen wybodaeth benodol i gyfranogwyr a roddwyd i chi gan yr ymchwilydd yn gwrthdweud ei gilydd – sy'n annhebygol – y ddalen wybodaeth benodol i gyfranogwyr fydd yn cael blaenoriaeth.

Hunaniaeth y Rheolwr Data

Fel Rheolwr Data, mae gan Brifysgol Caerdydd gyfrifoldeb cyfreithiol dros brosesu eich datapersonol yn unol â deddfwriaeth Diogelu Data. Er mwyn cyflawni ei swyddogaethau ymchwil, mae'n hanfodol bod y Brifysgol yn casglu, yn storio, yn dadansoddi, ac fel arall yn prosesu'ch data personol.

Mae Prifysgol Caerdydd yn gofrestredig gyda Swyddfa'r Comisiynydd Gwybodaeth (ICO) i brosesu data personol at ddibenion ymchwil. [Rhif cofrestru Z6549747](#).

Pa wybodaeth bersonol rydym yn ei chasglu amdanoch chi?

Mae pob prosiect ymchwil yn wahanol, a bydd yr wybodaeth a gasglwn yn amrywio. Cewchddalen wybodaeth i gyfranogwyr a fydd yn nodi'r data personol y mae angen i ni ei gasglu gennych ar gyfer y prosiect ymchwil. Bydd ymchwilwyr yn casglu gwybodaeth sy'n hanfodolat ddibenion y gwaith ymchwil yn unig.

Cesglir peth data (megis data arolwg) yn ddienw'n aml, felly ni ellir ei dynnu'n ôl unwaith y byddwch wedi rhoi eich caniatâd i ni ei ddefnyddio. Pan fydd modd eich adnabod mewn cyhoeddiad ymchwil o bosibl (megis dyfyniad priodoladwy neu ffotograff), byddwn yn ceisioeich caniatâd yn benodol.

Beth yw ein sail gyfreithiol dros brosesu eich data personol?

O dan gyfraith Diogelu Data, mae'n ofynnol i ni nodi'r sail gyfreithiol rydym ni'n dibynnu arni i brosesu eich data personol.

Mae Prifysgol Caerdydd yn sefydliad ymchwil cyhoeddus a sefydlwyd drwy [siarter frenhinol](#) iddatblygu gwybodaeth ac addysg drwy ei weithgarwch addysgu ac ymchwil. O'r herwydd, caiff data personol ei brosesu ar y sail bod gwneud hynny yn angenrheidiol ar gyfer ein tasggyhoeddus, at ddibenion ymchwil hanesyddol a gwyddonol er budd y cyhoedd, ac yn destuncamau diogelu.

Sylwer bod y sail gyfreithiol y caiff eich data personol ei brosesu o dan y ddeddf DiogeluData ar wahân i'r gofynion caniatâd moesegol ac unrhyw ddyletswydd cyfraith gyffredin ynghylch cyfrinachedd a allai fod yn gymwys.

Caiff gwaith ymchwil y Brifysgol ei lywodraethu gan bolisiau a gweithdrefnau, a chreffir ar yr holl ymchwil sy'n cynnwys cyfranogwyr dynol o ran moeseg, i sicrhau bod yr ymchwil yn caelei chynnal mewn modd sy'n diogelu'r sawl sy'n cymryd rhan. Gweler ein [tudalennau Gonestrwydd a Moeseg](#) am ragor o wybodaeth.

At ba ddibenion y caiff eich gwybodaeth ei defnyddio?

Bydd dibenion yr astudiaeth ymchwil yn cael eu nodi yn y ddalen wybodaeth i gyfranogwyr ybyddwch yn ei chael gan yr ymchwilydd cyn i chi gytuno i gymryd rhan yn yr ymchwil. Bydd yn nodi'n fanwl yr astudiaeth ymchwil benodol neu'r prosiect rydych yn cymryd rhan ynddo a'r ffynonellau data (lle bo'n berthnasol) y gellid eu defnyddio, unrhyw drefniadau rhannu data neu drosglwyddo data'n rhyngwladol, ac unrhyw benderfyniadau a wneir yn awtomatig a fydd yn cael effaith arnoch.

Pwy fydd â mynediad at eich data a sut y caiff ei ddiogelu?

I gyfleu ein gwaith ymchwil i'r cyhoedd a'r gymuned academiaidd, mae'n debygol y bydd eich data dienw'n ffurfio rhan o gyhoeddiad ymchwil, o gyflwyniad mewn cynhadledd neu sgwrs gyhoeddus. Gofynnir i chi am ganiatâd penodol os yw ymchwilwyr yn dymuno defnyddio unrhyw wybodaeth sy'n awgrymu pwy ydych chi.

Mae preifatrwydd eich data personol yn hollbwysig, ac ni chaiff ei ddatgelu oni bod dibencyfiawn dros wneud hynny. Caiff y trefniadau diogelwch penodol ar gyfer unrhyw ddata personol a roddwch eu cynnwys yn rhan o'r ddalen wybodaeth i gyfranogwyr, a bydd [Polisiau Diogelwch Gwybodaeth y Brifysgol](#) hefyd yn rhoi sylw iddynt.

Gellir rhannu eich data personol gydag aelodau o dîm y prosiect sydd wedi'u hawdurdodi iweithio ar y prosiect a defnyddio'r wybodaeth. Gall hyn gynnwys staff ym Mhrifysgol Caerdydd neu gydweithwyr mewn sefydliadau eraill. Nodir hyn yn

glir yn eich dalen wybodaeth i gyfranogwyr.

Lle bo angen, mae'n bosibl y bydd eich data personol hefyd ar gael i archwilyr neu'r unigolyn a enwir yn gyfrinachol, os bydd achosion o gamymddygiad ymchwil fel yr amlinellir yn ein [Gweithdrefnau ar gyfer Ymdrin â Honiadau o Gamymddwyn mewn Ymchwil Academaidd](#).

Am ba hyd y caiff eich gwybodaeth ei chadw?

Bydd y ddalen i gyfranogwyr yn rhoi manylion am y defnydd hirdymor (a lle bo'n bosibl, ei aildefnyddio), ac am gadw eich gwybodaeth bersonol mewn cysylltiad â'r astudiaeth ymchwil benodol neu'r prosiect rydych yn cymryd rhan ynddi/ynddo. Os ariennir yr astudiaeth, bydd ariannwr yr astudiaeth fel arfer yn diffinio'r cyfnod y caiff y data ei gadw arei gyfer. Fel arall, caiff ei gadw yn unol â [Pholisi Rheoli Cofnodion ac Amserlenni Cadw Cofnodion](#) y Brifysgol am gyfnod penodol ar ôl i chi roi'r gorau i gymryd rhan yn ein gwaith ymchwil.

Fel arfer, caiff data ymchwil ei wneud yn ddiennw cyn gynted â phosibl ar ôl i'r data gael ei gasglu, fel na ellir adnabod unigolion ac er mwyn diogelu eich preifatrwydd. Ni fydd modd ichi dynnu eich data yn ôl ar ôl y pwynt hwn.

Yn ogystal â'r data rydym yn ei gasglu gennych neu'r data a gynhyrchir drwy ryngweithio âchi fel rhan o'n gweithgarwch ymchwil, byddwn hefyd yn cadw eich data personol mewn dogfen llywodraethu prosiectau (yn enwedig cytundebau cyfranogwyr neu ffurflenni

caniatâd) ac mewn cofnodion o unrhyw ohebiaeth gyda chi drwy ebost neu lythyr. Fel arfer, bydd angen cadw'r data at ddibenion archwilio hyd yn oed os nad ydych yn penderfynu cymryd rhan, neu'n tynnu'n ôl yn ddiweddarach.

Eich hawliau diogelu data

Ceir hawliau amrywiol o dan ddeddfwriaeth Diogelu Data, a gellir cael manylion am y rhain ar y [dudalen hawliau ar y we](#). Sylwer bod eich hawliau i gael mynediad at eich gwybodaeth, ei newid neu ei symud, yn gyfyngedig, gan fod angen inni reoli eich gwybodaeth mewn ffyrdd penodol er mwyn sicrhau bod y gwaith ymchwil yn ddibynadwy ac yn gywir. Os byddwch yn tynnu yn ôl o'r astudiaeth, efallai y bydd angen i ni gadw'r wybodaeth sydd gennym eisoes amdanoch. I ddiogelu eich hawliau, byddwn yn defnyddio cyn lleied o wybodaeth bersonol adnabyddadwy â phosibl, a byddwn bob amser yn ceisio ymateb i bryderon neu ymholiadau a allai fod gennych a chydymffurfio â'ch dymuniadau cymaint â phosibl.

A ydym yn trosglwyddo gwybodaeth y tu allan i'r Ardal Economaidd Ewropeaidd(AEE)?

Nodir yn glir yn y ddalen wybodaeth i gyfranogwyr a fydd angen i ni drosglwyddo eich data personol y tu allan i'r AEE. Byddwn yn cymryd camau i wneud yn siŵr ein bod yn dilyn mesurau diogelwch priodol i ddiogelu eich hawliau preifatrwydd os oes angen trosglwyddo eich data personol y tu allan i'r AEE. Enghreifftiau o'r rhain yw gosod rhwymedigaethau cytundebol ar y derbynnydd neu sicrhau bod y derbynwyr wedi tanysgrifio i 'fframweithiau rhyngwladol' sy'n anelu at sicrhau dulliau diogelu digonol (er enghraifft "[Privacy Shield](#)" yn USA). Bydd mesurau technegol fel amgryptio hefyd yn cael eu hystyried.

Sut i godi ymholiad, pryder neu gŵyn

Os oes gennych unrhyw ymholiadau neu bryderon am sut y bydd eich data personol yn caelei ddefnyddio yn ystod y prosiect ymchwil, cysylltwch â'r prif ymchwilydd. Darperir y manylion amdano yn y ddalen wybodaeth i gyfranogwyr.

Os oes gennych ymholiadau neu bryderon o hyd, neu os ydych yn awyddus i wneud cwyn, mae manylion am sut y gallwch gysylltu â Swyddog Diogelu Data'r Brifysgol a Swyddfa'r Comisiynydd Gwybodaeth ar gael ar ein [tudalennau polisi am Ddiogelu Data](#).

Interviewee Consent Form (Bilingual)



Please note, the following information is available in Welsh from page 4.

TITLE OF RESEARCH: The influence of the sanction of committal on enforcement of council tax arrears in Wales.

FUNDING BODY: Economic and Social Research

Council RESEARCHER: Jennie Bunt

CONTACT DETAILS: Cardiff School of Law and Politics

Cardiff

University Law

Building

Museum

Avenue Cardiff

CF10 3AX

Email Address: BuntJL1@cardiff.ac.uk

Research Overview

The aim of this project is to increase understanding of debt enforcement as a legal process. The research will take the form of a case study which will focus on the enforcement of council tax arrears by the twenty-two local authorities of Wales. In particular, I am interested to understand more about the use of committal to prison as a sanction for council tax arrears under Regulation 47 of the Council Tax (Administration and Enforcement) Regulations 1992. As you will know, this sanction was removed by the Welsh Government in April 2019 following a public consultation on its suitability. Although it is rarely used, I am interested to find out more about the situations in which it has been used to date and why in those situations it was felt to be

appropriate and proportionate. Given that it is often the last resort of a local authority seeking to recover arrears of council tax, I am also interested to investigate how its removal will influence the wider enforcement system in the months and years following its removal.

I would like to conduct interviews with employees of local authority council tax departments to discuss their experiences of the enforcement system following the removal of committal as a sanction in April 2019. During the interviews I would be interested in discussing topics such as your job role in council tax enforcement, the targets and objectives you are set, how effective you feel in your role without the option to apply for committal and any recent changes to your internal systems or general approach to council tax collections. The interviews will be relatively informal and should be seen as an opportunity for you to provide feedback on the decision of the Welsh Government to remove committal and how this has affected your role on a day to day basis. Please note, I am not able to conduct interviews or respond to emails in Welsh.

Once I have conducted all of the interviews, I intend to analyse the interview responses in detail to highlight key themes and trends. In doing so I hope to develop recommendations for how the legal framework of council tax enforcement may be developed and improved to assist local authorities in collecting as much council tax as possible for community investment whilst safeguarding the welfare of citizens of Wales who may be struggling financially.

Involvement in Research

Recording and Storage of Data

Interviews will be conducted in person where possible, but otherwise by telephone or using Skype. The information and insights you share during the interview will be recorded in this research. If you agree, interviews will be recorded via a digital recording device. The services of a professional transcription service will be used to transcribe the content of the interviews for analysis. After our interview is finished the audio file and electronic copies of the interview transcripts will be stored on a registered Cardiff University computer that will be password controlled and will be used for research purposes only. Paper copies of the interview transcripts will be stored in a locked filing cabinet.

Personal Data

I do not intend to personally identify you in the interview. With your consent, I intend to refer to the name of the local authority which employs you and to provide a description of your job title and general responsibilities. Please be aware that it is not possible to guarantee your anonymity as a participant. After interviews have been conducted, you may request the withdrawal of your data from the project up to and until 31 August 2020. As a participant, you will not be expected to and should avoid referring to or disclosing the personal details of any third parties during the course of our discussions, including during the interview and in any other communications.

Intended Use of Data

The interview transcripts will be used as data to support my doctoral thesis. This will include verbatim quotes and summaries of interview responses to support the conclusions of my research. I also intend to present, publish and discuss the

research results at academic conferences and industry events and in publications such as journals, books and reports. The data will not be retained for any longer than is necessary for the purpose of academic research and dissemination.

Interview Consent Form

I understand that my participation in this project will involve an interview about my experiences of the council tax enforcement process in Wales following the removal of the sanction of committal in April 2019.

I understand that I am free to ask any questions at any time. If for any reason I experience discomfort during participation in this project, I am free to withdraw. I understand that participation in this study is entirely voluntary and that I can withdraw from the study at any time without giving a reason. If I decide to withdraw, I understand that the researcher will securely dispose of any data collected from our interview as soon as practically possible, and certainly not longer than twenty-eight working days following the receipt of a request to withdraw.

I understand that no details of my personal identity including my name, address, gender or contact details will be recorded or referred to in this research. I understand that details of the local authority which employs me, my job title and a description of my job role will be recorded and referred to in this research and that for this reason my participation is not anonymous but includes only such details as are adequate, relevant and not excessive. The data will be stored in accordance with the Data Protection Act (2018).

Please indicate whether you agree with the following statements by inserting your initials in each box:

| | Initials |
|---------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|
| I have read and understood all the information provided and have received adequate time to consider all the documentation. | |
| I have been given adequate opportunity to ask questions about the research (as defined in this consent form and the participant information sheet). | |
| I am aware of, and consent to the written and/or digital recording of my discussion with the researcher. | |
| I consent to the information and opinions I provide being used in the research (as defined in this consent form and the participant information sheet). | |

Interviewee Declaration

I consent to participate in the study conducted by Jennie Bunt, Cardiff School of Law and Politics.

Signature:

Print Name: Date:

| Additional Contact Information | |
|---------------------------------------|---------------------------------------------------------------------------------------------------------------|
| Researcher's Supervisor | Dr Wendy Kennett Cardiff School of Law and Politics Cardiff University Law Building Museum Avenue |

| | |
|----------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | <p>Cardiff CF10 3AX KennettW@cardiff.ac.uk</p> |
| <p>Cardiff School of Law and Politics Research Ethics Committee (SREC)</p> | <p>This project has received ethical approval from the Cardiff School of Law and Politics Research Ethics Committee (SREC) on 27/06/2019 (Internal Reference: SREC/180619/13).</p> <p>The Cardiff School of Law and Politics Research Ethics Committee (SREC) can be contacted at:</p> <p>School Research Officer Cardiff School of Law and Politics Cardiff University Law Building Museum Avenue Cardiff CF10 3AX Email: LAWPL-Ethics@cardiff.ac.uk</p> |

Ffurflen Cydsyniad Cyfwelai

TEITL YR YMCHWIL: Dylanwad sancsiwn traddodi i'r carchar ar orfodi ôl-ddyledion treth y cyngor yng Nghymru.

CORFF ARIANNU: Y Cyngor Ymchwil Economaidd a

ChymdeithasolYMCHWILYDD: Jennie Bunt

MANYLION CYSWLLT: Ysgol y Gyfraith a Gwleidyddiaeth Caerdydd

Prifysgol Caerdydd

Adeilad y Gyfraith

Rhodfa'r

Amgueddfa

Caerdydd CF10

3AX

Cyfeiriad e-bost: BuntJL1@cardiff.ac.uk

Trosolwg o'r ymchwil

Nod y prosiect hwn yw cynyddu dealltwriaeth o orfodi dyledion fel proses gyfreithiol. Bydd yymchwil ar ffurf astudiaeth achos a fydd yn canolbwyntio ar orfodi ôl-ddyledion treth y cyngorgan y 22 awdurdod lleol yng Nghymru. Yn arbennig, mae gen i ddiddordeb mewn gwybod mwy am ddefnyddio traddodi i'r carchar yn sancsiwn ar gyfer ôl-ddyledion treth y cyngor o dan Reoliad 47 o Reoliadau (Gweinyddu a Gorfodi) Treth y Cyngor 1992. Fel y gwyddoch, cafoddy sancsiwn hwn ei ddileu gan Lywodraeth Cymru ym mis Ebrill 2019, yn dilyn ymgynghoriad cyhoeddus ar ei addasrwydd. Er mai anaml y caiff ei ddefnyddio, mae gen i ddiddordeb mewn dysgu mwy am y sefyllfaoedd lle cafodd ei ddefnyddio hyd yma, a pham y teimlwyd, yn y sefyllfaoedd hynny, ei fod yn briodol ac yn gymesur. Gan mai dyma'r cam a gymerir gan awdurdod lleol wedi i bopeth arall fethu, er mwyn adennill ôl-ddyledion treth y cyngor, mae gen i ddiddordeb hefyd mewn ymchwilio sut bydd ei ddileu yn

dylanwadu ar y system orfodi ehangach yn ystod y misoedd a'r blynyddoedd ar ôl ei ddileu.

Byddwn i'n hoffi cynnal cyfweiliadau gyda chyflogeion adrannau treth y cyngor awdurdodau lleol i drafod eu profiadau o'r system orfodi wedi i draddodi i'r carchar gael ei ddileu fel sancsiwn ym mis Ebrill 2019. Yn ystod y cyfweiliadau byddai gen i ddiddordeb mewn trafod pynciau fel rôl eich swydd ym maes gorfodi treth y cyngor, y targedau a'r amcanion sy'n caeleu gosod ar eich cyfer, pa mor effeithiol rydych chi'n teimlo yn eich rôl heb fedru gwneud caisam draddodi i'r carchar, ac unrhyw newidiadau diweddar i'ch systemau mewnol neu eich agwedd gyffredinol at gasglu treth y cyngor. Bydd y cyfweiliadau'n gymharol anffurfiol, a dylech eu gweld fel cyfle i chi roi adborth ar benderfyniad Llywodraeth Cymru i ddileu opsiwntraddodi i'r carchar a sut mae hynny wedi effeithio ar eich rôl chithau o ddydd i ddydd. Nodwch, nid oes modd i'r ymchwilydd gynnal cyfweiliadau nac ymateb i e-byst yn y Gymraeg.

Wedi i mi gynnal yr holl gyfweiliadau, fy mwriad yw dadansoddi'r ymatebion yn y cyfweiliadau yn fanwl er mwyn amlygu themâu a thueddiadau allweddol. Wrth wneud hynny, rwy'n gobeithio datblygu argymhellion ar gyfer sut gall fframwaith cyfreithiol gorfodi treth y cyngor gael ei ddatblygu a'i wella i gynorthwyo awdurdodau lleol i gasglu cymaint o dreth y cyngor â phosibl er mwyn buddsoddi yn y gymuned, ochr yn ochr â diogelu lles dinasyddion Cymru a all fod yn cael trafferth ymdopi'n ariannol.

Cymryd rhan yn yr Ymchwil

Cofnodi a Storio Data

Cynhelir y cyfweiliadau wyneb yn wyneb lle bynnag y bo modd, ond fel arall dros y ffôn neu drwy Skype. Cofnodir yr wybodaeth a'r sylwadau y byddwch yn eu rhannu yn ystod y cyfweiliad yn yr ymchwil hon. Os byddwch chi'n cytuno, caiff y cyfweiliadau eu recordio â dyfais recordiodigidol. Defnyddir gwasanaeth trawsgrifio proffesiynol i drawsgrifio cynnwys y cyfweiliadau ermwyn ei ddadansoddi. Ar ôl gorffen y cyfweiliad, bydd y ffeil sain a chopïau electronig o drawsgrifiadau'r cyfweiliad yn cael eu storio ar un o gyfrifiaduron cofrestredig Prifysgol Caerdydd, a reolir â chyfrinair, ac a ddefnyddir at ddibenion ymchwil yn unig. Bydd copïau papur o drawsgrifiadau'r cyfweiliadau yn cael eu storio mewn cwpwrdd ffeilio dan glo.

Data Personol

Nid yw'n fwriad gen i nodi pwy ydych yn y cyfweiliad. Gyda'ch cydsyniad, rwy'n bwriadu cyfeirio at enw'r awdurdod lleol sy'n eich cyflogi, a darparu disgrifiad o deitl eich swydd a'ch cyfrifoldebau cyffredinol. Dylech fod yn ymwybodol nad yw'n bosibl gwarantu eich bod yn gyfranogwr di-enw. Wedi i gyfweiliadau gael eu cynnal, gallwch ofyn am dynnu eich data allano'r prosiect hyd at 31 Awst 2020. Fel gyfranogwr, ni fydd disgwyl i chi gyfeirio at fanylion personol unrhyw drydydd parti, a dylech osgoi gwneud hynny na'u datgelu yn ystod ein trafodaethau, gan gynnwys yn ystod y cyfweiliad, ac mewn unrhyw gyfathrebu arall.

Defnydd Arfaethedig o'r Data

Defnyddir trawsgrifiadau'r cyfweiliadau yn ddata i gefnogi fy thesis doethurol. Bydd hynny'n cynnwys dyfyniadau gair am air a chrynodebau o ymatebion i'r cyfweiliadau i gefnogi casgliadau fy ngwaith ymchwil. Mae hefyd yn fwriad gen i gyflwyno, cyhoeddi

a thrafod canlyniadau'r ymchwil mewn cynadleddau academaidd a digwyddiadau diwydiannol, ac mewncyhoeddiadau megis cyfnodolion, llyfrau ac adroddiadau. Ni chedwir y data'n hwy nag sy'n angenrheidiol at ddibenion ymchwil academaidd a lledaenu.

Ffurflen Cydsynio i Gyfweiliad

Rwy'n deall y bydd fy nghyfranogiad yn y prosiect hwn yn cynnwys cyfweiliad am fy mhrofiadau broses gorfodi treth y cyngor yng Nghymru wedi i sancsiwn traddodi i'r carchar gael ei ddileuym mis Ebrill 2019.

Rwy'n deall y bydd modd imi ofyn cwestiynau unrhyw bryd. Os bydda i'n teimlo'n anesmwytham unrhyw reswm wrth gymryd rhan yn y prosiect hwn, bydd modd imi roi'r gorau iddo. Rwy'ndeall mai o'm gwirfodd yn llwyr y byddaf i'n cymryd rhan yn yr astudiaeth hon ac y bydd moddimi roi'r gorau iddi unrhyw bryd heb roi rheswm. Os byddaf yn penderfynu tynnu'n ôl, rwy'n deall y bydd yr ymchwilydd yn dinistrio'n ddiogel unrhyw ddata a gasglwyd o'n cyfweiliad cyn gynted ag sy'n ymarferol bosibl, ac yn sicr heb fod yn hwyrach na 28 diwrnod gwaith ar ôl derbyn cais i dynnu'n ôl.

Rwy'n deall na fydd unrhyw fanylion hunaniaeth bersonol, gan gynnwys fy enw, fy nghyfeiriad, fyrhywedd na'm manylion cyswllt yn cael eu cofnodi yn y gwaith ymchwil hwn, ac na fydd yn cyfeirioatynt. Rwy'n deall y bydd manylion yr awdurdod lleol sy'n fy nghyflogi, teitl fy swydd, a disgrifiado rôl fy swydd yn cael eu cofnodi yn yr ymchwil, ac y cyfeirir atynt ynnddi, ac felly na fydd fy nghyfranogiad yn ddi-enw, ond yn hytrach bydd yn cynnwys manylion digonol, perthnasol yn unig, heb fod yn eithafol. Caiff y data ei storio yn unol â Deddf Diogelu Data 2018.

Nodwch a ydych chi'n cytuno â'r gosodiadau isod trwy roi'ch blaenlythrennau yn yblwch:

| | Blaenlythrennau |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------|
| Rwyf wedi darllen a deall yr holl wybodaeth a roddwyd ac rwyf wedi cael digon o amser i ystyried yr holl ddogfennau. | |
| Rwyf wedi cael digon o gyfle i ofyn cwestiynau am yr ymchwil (fel y'i diffiniwyd ar y ffurflen gydsynio hon a'r daflen wybodaeth i gyfranogwyr). | |
| Rwy'n gwybod y bydd yr ymchwilydd yn cofnodi ein trafodaeth ar ffurf ysgrifenedig a/neu ddigidol ac rwy'n caniatáu hynny. | |
| Rwy'n cydsynio i'r wybodaeth a'r farn a roddaf gael eu defnyddio yn yr ymchwil (fel y'i diffiniwyd ar y ffurflen gydsynio hon a'r daflen wybodaeth i gyfranogwyr). | |

Datganiad y Cyfwelai

Rwy'n cydsynio i gymryd rhan yn yr astudiaeth gan Jennie Bunt, Ysgol y Gyfraith aGwleidyddiaeth Caerdydd.

Llofnod:

Printio Enw: Dyddiad:

Manylion cyswllt ychwanegol:

| | |
|--------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Goruchwyliwr yr Ymchwilydd | <p>Dr Wendy Kennett Ysgol y Gyfraith a Gwleidyddiaeth Caerdydd Prifysgol Caerdydd Adeilad y Gyfraith Rhodfa'r Amgueddfa Caerdydd CF10 3AX KennettW@cardiff.ac.uk k</p> |
| Pwyllgor Moseg Ymchwil Ysgol y Gyfraith a Gwleidyddiaeth Caerdydd (SREC) | <p>Mae'r prosiect hwn wedi cael sêl bendith Pwyllgor Moseg Ymchwil Ysgol y Gyfraith a Gwleidyddiaeth Caerdydd ar 27/06/2019 (Cyfeirnod mewnol: SREC/180619/13).</p> <p>Mae modd cysylltu â Phwyllgor Moseg Ymchwil Ysgol y Gyfraith a Gwleidyddiaeth Caerdydd trwy:</p> <p>Swyddog Ymchwil yr Ysgol Ysgol y Gyfraith a Gwleidyddiaeth Caerdydd Prifysgol Caerdydd Adeilad y Gyfraith Rhodfa'r Amgueddfa Caerdydd CF10 3AX E-bost: LAWPL-Ethics@cardiff.ac.uk</p> |

Appendix Five - Interview Framework

At the beginning I will thank them for inviting me and for giving up their time. I will remind them that I am interested in hearing about their experiences of the use of committal and their reflections on how its removal has impacted them and the wider enforcement team. I will explain that I have some topics of discussion prepared but am really interested in hearing their views so am open to whatever they wish to talk about. I will stress that I do not need details of particular cases and they should take care not to provide any information about third parties which could render them identifiable. I will make sure they are comfortable being audio-recorded, explaining that this allows me to engage more in the conversation than taking notes. I will remind them of the terms of their consent to participation and their rights to withdraw as set out in my participant documents. I will check whether they have any questions about their participation and remind them that the discussion should take no more than ninety minutes.

1. Introductory

Please could you describe your job role?

- Level of experience
- Day to day realities of job

Please could you give me an overview of the team responsible for council tax collections.

- Number of staff?
- Are they divided into sections?

How do you organise responding to communications and correspondence relating to council tax?

- How often do you speak with debtors directly? Is it common for you to speak to debt advisers or representatives acting on their behalf?
- What system do you use for case management?
- How do you access information about individuals in arrears? What information do you normally have about them?
- What are the key objectives for members of the collections team?
- What do you feel are the most effective current enforcement methods at your disposal?
- What are the main challenges you experience with collecting council tax arrears?
- Are there any challenges which you feel are specific to your area?

- Do you communicate with other departments within your local authority to access further information about debtors? Which departments are most relevant?
- Do you communicate with neighbouring local authority areas about your methods of enforcement and areas of good practice?
- Do you have any views on the recent government initiatives on a single view of debt and data sharing?

1. Previous use of committal

Prior to its removal in 2019, did your authority use committal as an enforcement method?

- If yes, what would be typical circumstances in which committal was considered?
- What would be the key factors that would influence a decision to issue committal proceedings?
- In terms of the requirement to have attempted to take control of goods which precedes committal, would this be a situation of unable to access the property or able to access but not items to take control of?
- What did you understand as the purpose of the option to apply for committal?
- Would you have applied or had in mind the legal tests of wilful refusal or culpable neglect when assessing a debtor's suitability for an application for committal?
- Did you find it difficult to produce evidence to satisfy these legal tests?
- Could you give me an idea of the process of applying for committal?
 - How long did this process take?
 - Did the application for committal need additional approval in terms of suitability or the expense of the application?
- How did you assess the cost/benefit of committal? Did you make this assessment, and if so, how?
- Where a hearing took place, did you feel that this was effective/useful in encouraging payment?
- What was your experience of suspended orders with repayment arrangements? Were they more successful than earlier repayment arrangements where there was no threat of committal?

- Did previous experiences of committal hearings influence your decisions to make subsequent applications?
- How often were debtors legally represented at the committal hearing stage?
- If debtors were committed, what would happen next with their arrears?
- Have there been any cases/instances since the removal of committal in which you would have used committal as a method of enforcement? Why?

If no, please describe the processes which led you as an authority to decide to cease using committal. Did you feel this decision was scrutinised by the Welsh Government in assessing your collection rates?

1. Public Consultation

If they did not respond to the consultation –

- what was the reason?
- What were your views at the time, and have they changed since then?

If they did respond to the consultation –

- what was their experience of this process?
- Did you feel able to be open about your views on committal?
- Do you feel you were listened to?
- Do you have any views on what prompted the public consultation?
- Did you feel a public consultation was the correct way to reach a decision on this change in the law? If not, what do you feel would have been more suitable?
- What did you think about the way in which the consultation was phrased? (I.e. it was a consultation on whether to remove committal, with a clear preference from Mark Drakeford that it should not be used any more, as opposed to just asking people's views on whether we should use it.)

1. Impact of Removal of Committal

- What sense do you get about whether the public are aware of the change in the law? Has this come up in communications with debtors?
- Do you feel as effective in your efforts to collect council tax without the availability of committal?
- Do you instruct external enforcement agents or use in-house staff?

- Have there been any changes to your approach to taking control of goods in recent years?
- What now happens with cases where taking control of goods fails to recover arrears?
- Have you seen an increase in the number of cases where arrears are written off?
- Have there been any significant changes in your processes since committal was removed?
- Have you conducted additional training since its removal?
- Has this had an impact on targets and objectives?
- Having experienced the system without committal, do you feel there is a need for a new form of enforcement?
- If yes, what do you feel would be most effective/appropriate and why?
- How do you strike a balance between achieving high collection rates and protecting the welfare of debtors?
- A key commitment of the Welsh Government has been 'making council tax fairer'. Has this been successful?
- Have your views about committal changed since the public consultation?

Supplementary Questions:

I would be really interested in conducting some statistical analysis of the factors which increase collection rates, and what role committal played in this. Would you be willing to share your benchmarking data with me for the purpose of this analysis?

Are you aware of individuals in other local authorities who you feel may be open to being interviewed?

Appendix Six – Example of advertisement of new debt recovery technology

Communication innovation for income recovery

Proactive Customer Contact

Customer contact services, self service, enforcement
letter replacement with activity tracking

Multi contact channel communications engine.

Recovery workflow scripting with intuitive behaviour communications.

Mobile WebForms® with full customer activity tracking and reporting.

Interactive voice message reminders with full activity & reporting.

SMS Text reminders with full tracking & reporting.

Email reminders with full tracking and reporting.

Auto data enrichment Mobile, landline & email appending in partnership with multiple suppliers.

CRM 'soft touch' integration to flow data and activity reports seamlessly.

Desktop SMS/Email template confirmation and chat tools. Confirm & talk.

Treble Touch income recovery contact work flow

1) Data loaded for contact process
2) Records tele & email appending.
3) Work flow recovery process implements.
4) Day 1 (D1) data loaded to Engage.

CASE mgmt database
Treble Touch pre-processing stage.
Bureau or Automated.

Tele & Email appending: Pre process.

5) Data loaded for optimised contact delivery and contact preference.
6) Vulnerable customer suppression data checked automatically.

Mailed Post Channel
Records returned with no E-device contact details are ignored. Data file copy forward flowed to mailing function.

1) D1 Process - Notification Stage.
A - PUSH AVM NOTIFICATION.
B - PUSH WebForm NOTIFICATION - Self service options.
C - PUSH Email NOTIFICATION message- Self service links.

Treble Touch engagement strategy.
AVM, SMS WebForm and Email when data permits.

REPORTING Follow on action options.
7) Run D3 new treatment reminder.
8) **OPTION 1** - Invalid Data – re-appended. Repeat D1 notification stage.
9) **OPTION 2** - Invalid Data – returned to client for Mailed Post Channel.

Under pressure to reduce the cost of recovery, collect more with less resources? Telsolutions' innovative communication services enable the income and enforcement team to dramatically increase contact and payment rates whilst reducing mailed post and operation costs.

Treble Touch strategies are a new development that uses three combined communication channels to contact customers. The service tracks and responds to customer behaviour promoting self service. Resources use customer tracking to focus on customers requiring further assistance.

Higher volumes of cases can be processed at the optimum contact time and with increased contact rates existing operational costs are greatly reduced. All data can be cleansed and enriched before processing increasing success rates.

- Reach more customer accounts within a shorter period of time.
- Generate more call backs.
- Dramatically reduce cost-per-contact.
- Reduce postal charges.
- Track and monitor customer interactions.

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www.telsolutions.co.uk

Linked in IIRV

Appendix Seven – Application for Ethical Approval and Evidence of Approval

Cardiff School of Law and Politics Ethical Approval Form

| Applicant details | |
|---------------------------------|-----------------------|
| Name of applicant | Jennie Bunt |
| University email address | BuntJL1@cardiff.ac.uk |

| Project details | |
|------------------------------------------------------------------------|--------------------------------------------------------------------------------------------|
| Title of Project | The influence of the sanction of committal on enforcement of council tax arrears in Wales. |
| Project Start Date | 1 October 2018 |
| Project End Date | 30 September 2021 |
| Name of any additional researchers associated with this project | |
| Funder (if applicable) | Economic and Social Research Council |

| Students only | | | | |
|------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------|--------------|--|
| All students must discuss their research project with their supervisor(s) prior to submitting an application for ethical approval. | | | | |
| Student Number | D1112256 | | | |
| Degree Programme | Doctor of Philosophy (Law) | | | |
| Name of Supervisor | Dr Wendy Kennett Dr Thomas Hayes | | | |
| Supervisor Approval | As the supervisor for this student project, I confirm that I believe that all research ethical issues have been dealt with in accordance with University policy and the research ethics guidelines of the relevant professional organisation. I also confirm that I have read and understand the University Ethical Guidelines in my role as a supervisor. | | | |
| | <table border="1" style="width: 100%;"> <tr> <td style="width: 70%;">Supervisor Signature:</td> <td>Date:</td> </tr> <tr> <td style="height: 40px;"></td> <td></td> </tr> </table> | Supervisor Signature: | Date: | |
| Supervisor Signature: | Date: | | | |
| | | | | |
| Research Ethics Training | Students will be required to complete the online Research Ethics training modules. The modules you are required to complete are: | | | |

| | | |
|--|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|
| | <input type="checkbox"/> Research Ethics 1: Research Governance <input type="checkbox"/> Research Ethics 2: Working with Human Subjects | |
| | <p>The Committee will require you to demonstrate your understanding of Research Ethics by completing the course quiz related to the two modules. Once you have completed the quiz please could you send evidence of your result to LAWPL-Ethics@cf.ac.uk (this can be as a screen print). The Committee will expect you to obtain a minimum of 14 out of 15 on each quiz.</p> | |
| | <p>I have received appropriate Research Ethics Training. I have appended documentation to demonstrate my understanding.</p> | |
| | Student Signature: | Date: |

| |
|----------------------------------------------------------|
| FOR RESEARCH OFFICE USE ONLY: |
| <input type="checkbox"/> Form Checked by Research Office |
| <input type="checkbox"/> Ethics Training Completed |

Research Project Proposal

| | |
|--------------------------|--------------------------------------------------------------------------------------------------------------------------------|
| Title of Project: | Local authority debt enforcement: the understandings, assumptions and motivations of 'last resort' enforcement methods. |
|--------------------------|--------------------------------------------------------------------------------------------------------------------------------|

Research Proposal (a maximum 500 words is permitted).

Synopsis of the Research Project

This project will improve understanding of the methods of legal enforcement used by local authorities in Wales to collect council tax arrears, a significant factor in all household indebtedness in the UK. Such enforcement is underpinned by a tension between the need to generate income for the community and the obligation to protect the welfare of vulnerable individuals with limited capacity to pay.

The focus will be the use of committal to prison as a 'last resort' in the enforcement process. This option has been available to local authorities since the introduction of council tax in 1992 and has still been used, albeit relatively rarely, despite significant criticisms of its proportionality as a response to a civil debt and the impact it has on the welfare of the imprisoned debtor and their family. From April 2019, the sanction was removed as an option for Welsh

local authorities following a public consultation on its suitability. As a result of this recent change in the law, the research question has two elements:

Q1. Why was committal to prison used as an enforcement method in Wales from 1992 to 2019?

Q2. How has the removal of committal influenced enforcement of council tax in Wales after 2019?

The overall aim of the project is to develop an overall view of the use of committal based both on its history whilst in use and the gap left by its removal. These empirical findings will be used to discuss potential alternative methods of enforcement which may strike a more widely acceptable balance between the competing interests of the local authority and the individual.

Research Methodology

- Discourse analysis of secondary sources of textual data on the use of committal (to include government reports, academic commentary and case law, all publicly available).
- Discourse analysis of responses by local authorities to the Welsh Government public consultation on the removal of committal as a sanction for council tax (already provided by Welsh Government in line with their duty to make such responses available to the public upon request).
- Statistical analysis of Welsh Government public data on collection rates and methods of enforcement.
- Interviews with members of staff of each of the council tax enforcement teams of the twenty-two local authorities of Wales. This will involve a maximum of twenty-two sessions but may in reality be fewer depending on the success of participant recruitment. These sessions will be conducted in person where possible but otherwise by telephone. Interviews will be semi-structured, using a general outline of key themes to explore. Discussion will include consideration of how effective participants feel in their role without committal, changes to the overall style of enforcement in terms of coercion and punishment and access to information about debtor circumstances. There will also be some general discussion of their role and the internal or external pressures which influence enforcement.
- Interviews with up to five debt advisors employed by StepChange Debt Charity to explore their perceptions of any changes in the enforcement of council tax as a result of the removal of committal. Again, these will be conducted in person or by telephone depending on availability.

I intend to begin the interviews from January 2020, to allow time for the influence of the removal of committal to present itself and for my participants to adjust to any alterations to their systems.

Recruitment Procedures

| | | Yes | No | N/A |
|---|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|----|-----|
| 1 | Does your project include participants who might be considered vulnerable in the course of the research (as defined by the Cardiff University Safeguarding Children and Vulnerable Adults Policy)? | | X | |
| | (a) If so, do you have an up-to-date Disclosure and Barring Service (DBS) check (previously Criminal Records Bureau check, CRB)? | | | X |
| | (b) If so, have you read and understood the University guidance for researchers working with children and young people which forms part of the Safeguarding Children and Vulnerable Adults Policy? | | | X |
| 2 | Is your project likely to include any participants who may disclose evidence or information about criminal activities? | | X | |
| 3 | Does your project include people who are, or are likely to become your clients or clients of the department in which you work? | | X | |
| 4 | Does your project provide for people for whom English / Welsh is not their first language? | X | | |
| 5 | Does your project involve completing research with any external organisations (for example, where participants include NHS patients, social care/community care users or people in custody)? | | X | |
| | (a) If so, have you submitted your project for ethical approval to the Integrated Research Application System (IRAS)? https://www.myresearchproject.org.uk/ | | | |

Please provide details and explain how you intend to deal with recruitment procedures:

For consideration:

- *From whom do you propose to collect data?*

I intend to collect data from members of staff of local authority council tax enforcement teams in Wales. This may include department managers or enforcement staff, depending on access and availability. I intend to conduct one-to-one interviews on a semi-structured basis, with the sessions expected to last one to two hours each.

As a form of triangulation of the local authority interview data I am also interested in the possibility of conducting interviews with debt advisors from StepChange Debt Charity (external collaborators for my PhD studentship).

- *How will they be recruited?*

I will begin recruitment activities as soon as possible after ethical approval is obtained to allow for the busy schedules of the local authorities and to allow ample time for potential participants to make an informed decision.

I will send email and postal enquiries to all the twenty-two local authorities using the addresses made available on their websites, inviting them to arrange an interview to share their views on the removal of committal. I will provide a comprehensive information sheet with both the email and the letter and invite them to contact me if they have any questions. In line with Cardiff University's Welsh Language Standards 2018 and the Welsh Language (Wales) Measure 2011, I intend to use a professional Welsh translation service to enable me to provide my enquiry email, information sheet and consent form in both English and Welsh. This will ensure that my potential participants are able to consider the information about my research in whichever language they prefer. This is in line with the Economic and Social Research Council's Ethics Case Study on research in multi-lingual settings which stresses the importance of cultural sensitivity in research design and delivery⁷⁴³ and I hope this will demonstrate to my participants some awareness of regional language preferences. In terms of the interviews I do not intend to use translation services and will conduct the discussion solely in English as it is highly unlikely that members of staff of the local authority would speak only Welsh, and on balance I feel translation may cause confusion and impact on the quality of the interview data. I feel this is the appropriate level of provision to make for alternative languages in all the circumstances and I will make these arrangements very clear at all stages to manage expectations.

In my information sheet I will provide details of the aims and objectives of my research, plans for publication and dissemination and arrangements for storage of the data in line with GDPR.

My supervisor has been in contact with StepChange for a number of years and we have discussed options for collaboration. StepChange have an office in Cardiff which specialises in advice for individuals identified as particularly vulnerable. Through communications with Alison Blackwood, their Senior Policy and Campaigns Advocate, arrangements would be put in place to conduct up to five interviews, most likely over the course of a few days, with advisors in this office. I do not intend to make any reference to specific client details in our discussions or anything which may render them identifiable but will be interested in discussing broader trends in the advisor's experience of their role following the removal of committal. Any accidental reference to client details will be redacted from my transcripts.

- *Will any third party individuals or organisations ('gatekeepers') be involved in helping to recruit or select participants? Please explain how they will be involved and any access they may have to participant data.*

⁷⁴³ <file:///C:/Users/Owner/Zotero/storage/EZGLI6XT/case-study-working-in-a-multi-lingual-setting.html>

Option of asking Tom Horton at Welsh Government Council Tax Team, or Ceri Greenall or Nina Prosser (2017 research on council tax collection) for contact details of each local authority council tax team manager, to speed up the process of participant recruitment?

- *Does your project involve completing research with any external organisation? Some types of research activity require additional advance ethical approval to be given from the relevant governing body. For example, where participants include NHS patients, social care/community care users or people in custody.*
- *Does your research involve participation by members of the judiciary? Please explain how you plan to secure approval from the Judicial Office.*

N/A.

- *Does your research involve gathering data, interviewing staff or accessing court files, from the courts or tribunal service in England and Wales? Please explain how you plan to secure approval from the Ministry of Justice Data Access Panel.*

Option of contacting HMCTS to request data on cost of committal for council tax (as recommended by Tom Horton).

Informed Consent Procedures

| | | Yes | No | N/A |
|----|-----------------------------------------------------------------------------------------------------------------------------------|-----|----|-----|
| 6 | Will you obtain written consent for participation? | X | | |
| 7 | Will you tell participants that their participation is voluntary? | X | | |
| 8 | If the research is observational, will you ask participants for their consent to being observed? | | | X |
| 9 | Will you tell participants that they may withdraw from the research for any reason and provide a clear timescale for withdrawing? | X | | |
| 10 | Will you give potential participants an appropriate period of time to consider participation? | X | | |

Please explain how you intend to deal with any ethical issues relating to the obtaining of participant consent:

For consideration (if applicable):

- *How will consent to provide data be obtained from participants?*

Following my initial enquiry communications, if I receive a response from prospective participants, I will provide them with a consent form to consider. This consent form (copy attached to application) will be clear and concise, with reference made to key points contained within the information sheet. I will allow the prospective participants time to consider their decision and to ask any questions or raise any concerns about involvement. If they wish to participate. I will ask them to sign and return my written consent form. When interviews go ahead, I will also confirm the details which form the basis of their written consent at the beginning of our discussion to make sure their consent is continuing, and nothing has changed. This will be audio-recorded as a secondary form of evidence of their informed consent.

- *How will participants be able to withdraw from the research?*

Participants will be made aware in the information sheet and consent form that they can withdraw from the project at any time by communicating to me their intention. I will not place any limitations on this option to withdraw.

- *Will a clear timescale be provided for participants to request that their data be withdrawn from the study?*

Participants will be able to request that their data be withdrawn from the study at any time, and from this point I will dispose of any audio-recordings or interview notes as soon as practically possible. This will be confirmed to the former participant by email.

- Any measures to be taken in relation to the protection of participants and gaining informed consent (e.g. presence of a responsible adult; consent from head teacher etc.)

As the participants will be adults acting in their professional capacity as employees of the local authority, I do not anticipate any limitations on their capacity to provide informed consent which would require such additional safeguards. I will include in my initial inquiry a request for details of any accessibility requirements such as visual or hearing impairment which may require adjustments and respond as appropriate. As mentioned above, initial information and materials will be provided in Welsh and English to assist in ensuring fully informed consent.

| Researcher and Participant Safety | | | | |
|------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|-----------|------------|
| | | Yes | No | N/A |
| 11 | Is there any realistic risk of any participants experiencing either physical or psychological distress or discomfort? | | X | |
| 12 | Is there any realistic risk of any participants experiencing a detriment to their interests as a result of participation? | | X | |
| 13 | If you have answered yes to either of the previous two questions, have you read and understood the University's Health and Safety Policy ? | | | X |

| | | | | |
|----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|--|--|
| 14 | If relevant to your research, have you read and understood the University's guidance on safety in fieldwork and guidance for lone workers ? | X | | |
|----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|--|--|

Please outline any risks:

- **to the participants which may be entailed in the proposed research and how you intend to minimise those risks. Include details about how you propose to disseminate results.**
- **to which you might be exposed while carrying out the proposed research and how you intend to minimise those risks.**

For consideration:

- *Have you considered how participants could be potentially harmed? This harm could be psychological, legal, political, economic or physical.*

The participants in my research will be asked to share only their professional experiences of collecting council tax arrears as part of their employment and as a result I would assert that there is little to no risk of psychological or physical harm. Interviews will be conducted in an office with no associated environmental risks, or by telephone.

The only potential source of harm may be if something they were to express in interview were to be disliked by senior members of the team they work for. This generates a very small risk of economic harm if their employment were threatened by their participation in the research, but this risk should be mitigated by basic UK employment rights and obligations. As mentioned above I will be looking to speak to enforcement team managers or their staff but would anticipate that the majority of participants would be at management level because they may be more comfortable expressing views on behalf of the wider team than more junior staff. Their individual identity will be kept anonymous save for some general description of their role and level of experience as I will be treating their views as data which indicates the wider position of their authority, rather than their personal opinion. I do intend to refer to the authority they are linked to as a key benefit of a Welsh case study will be the ability to reflect on regional practices and attempt to link said practices to wider demographic factors. If reference to the location of the authority generates problems for participants a compromise would be to refer to South-East, South-West, North-East and North-West authorities as classifiers with some level of anonymity.

- *Have you considered researcher safety? Particularly if the researcher is working alone and away from the University.*

I will be working alone during the interviews and where these can be conducted in person will travel alone to the authority's premises. I therefore fall within two of the examples given in Cardiff University's Lone Working Guidance as I will be working on another employer's premises and travelling in the course of work. Despite this, I am of the view that none of the qualities of my proposed research activities are unsafe to be completed by an unaccompanied person and I will be at no greater risk than a research working with a fellow employee. This being said, I am aware that I should keep in mind that as a lone person I will be more vulnerable if or when the unexpected happens. For this

reason, I will make clear arrangements with my participants in relation to how long my visit to their site should last and communicate these plans to my supervisory team in advance of me commencing field work. I am able to communicate with my supervisors by mobile and through email on my mobile phone, and plan to update them briefly when I arrive at a new site and depart. I will also communicate with my partner when away from home to conduct interviews. I have some confidence in my ability to conduct meetings of this kind as I have experience of conducting client appointments for legal advice, situations which could often involve quite difficult or emotive topics which required me to keep in mind my own personal safety and be able to manage the course of the discussion. I therefore feel I am competent to carry out the task and to deal with foreseeable problems, as required by the Lone Working Guidance.

- *If working alone how will you keep your supervisor/project team updated on whom you are meeting, where and when?*

Prior to commencing fieldwork, I will provide my supervisors with a detailed itinerary of my proposed interview timetable using Microsoft Teams. This is an application we currently use for sharing supervision notes and for feedback on my written work. It will allow me to upload a working document which I can then update as and when required to ensure they always have a source of reference for my planned activities. This will include details of where I am travelling, who I plan to meet and how long I have planned for the meeting to last. I can also share the final email I receive from each participant which confirms our arrangements. I will also send some brief communications by text or email when I arrive on each site and depart.

- *Where will the proposed research take place? If the research project will take place outside the UK, have you considered the ethical practices of the proposed country? Have you considered the FCO travel advice provided by the Government?*

The proposed research will take place in meeting rooms at each of the local authority's council tax department as arranged, or if this is not possible, I will conduct the interviews by telephone from my PGR office space, or a seminar room in the Law School. I do not anticipate that either arrangements will pose any risk to my own or participant safety.

- *Have you considered your own safety and completed a risk assessment using the University guidance?*

Data Protection and Data Management

| | | Yes | No | N/A |
|----|------------------------------------------------------------------------------|-----|----|-----|
| 15 | Will any non-anonymised and/or personalised data be generated and/or stored? | X | | |

| | | | | |
|----|----------------------------------------------------------------------------------------------------------------------------------------------------------|---|---|--|
| 16 | Will you have access to documents containing sensitive ⁷⁴⁴ data about living individuals? | | X | |
| 17 | If you have answered yes to either of the previous two questions, have you read and understood the University's Data Protection Policy ? | X | | |

Please explain how you intend to secure any personal data:

For consideration:

- *Have you considered the General Data Protection Regulation (GDPR) and Data Protection Act (2018)?*
- *How will data be anonymised and how will confidentiality be maintained?*
- *How will data be handled and stored throughout the project: at collection stage; when used/disclosed; when stored; and when destroyed?*
- *Will you disseminate this collected data to your supervisor or co-investigator? If so how will this be securely completed? Will data only be shared using University approved software (for example OneDrive and FastFile)?*
- *Are you planning to travel with the collected data? How will you ensure the data is secure during transportation?*

I have past experience of the importance of protecting personal information from working as a legal advisor. This required me to protect often highly sensitive medical and financial information and to act with integrity in controlling and organising contact details and client records in large volumes. This will assist me in the proposed research as I am familiar with the organisational requirements and the overall importance of taking care of the information of another person or organisation.

I am aware that my actions in processing personal data are governed by the EU General Data Protection Regulation 2018 and the UK Data Protection Act 2018. The lawful basis for my proposed processing of personal data will be that my research amounts to a task in the public interest in accordance with the objects of Cardiff University as set out in Section II(1)(1) of the Supplemental Charter of Cardiff University i.e. 'to advance knowledge and education by teaching and research'.⁷⁴⁵

I do not anticipate recording any information which would be considered to be sensitive data.

I intend to collect interview data by recording my discussions with each local authority and each debt advisor on a Dictaphone. I will avoid referring to the participants' names in the discussion but will refer to the local authority area they represent. I will not name any of the debt advisors interviewed but will specify that they are employed by StepChange Debt Charity. Each audio file will be saved to my Cardiff University registered computer following

⁷⁴⁴ Sensitive data are *inter alia* data that relates to racial or ethnic origin, political opinions, religious beliefs, trade union membership, physical or mental health, sexual life, actual and alleged offences

⁷⁴⁵

completion of each interview. I will also use a memory stick to keep a backup version of each audio file in case of their loss; this memory stick will be password protected. All electronic equipment which contains interview audio files will be stored in a locked draw in my office. I feel this demonstrates adherence to the Data Protection Principle that all personal data will be appropriately secured and protected from unauthorised access, loss or disclosure.⁷⁴⁶

Once I have completed all of my interviews, I will use the services of a professional transcription service to have the interviews transcribed into text format. I will ensure that the transcription service I use gives assurances regarding confidentiality of the information they will be privy to as part of their role. Once I receive copies of my completed transcriptions, I will redact any reference to names or any personal information. Copies of the transcriptions will be retained in electronic format on my Cardiff University registered computer (encrypted and password protected) and in paper format in a locked draw in my office. The only personal data I intend to retain will be their authority and brief details of their role to enable me to map practices across Wales. For this reason I would describe my data retention strategy to be concerned with pseudo-anonymised data in that there is the possibility that someone who read the interview transcripts could narrow down the potential identity of the individual concerned based on the details retained or in combination with other public sources of information, but on balance I do not anticipate that this would cause any risk of harm to the participant. I feel this demonstrates adherence to the Data Protection Principle of data minimisation in that I will only obtain personal data which is adequate, relevant and not excessive.⁷⁴⁷ My data retention strategy will be clearly detailed in my consent form and information sheet.

In addition to my participant information sheet I will also provide each participant with a copy of the Cardiff University Research Participants Data Protection Notice⁷⁴⁸ which provides more general information on the Data Controller, the legal basis for processing personal data, dissemination, data retention, the participants rights and the details of where to make a complaint.

Within my participant information sheet I will include a privacy notice which will include my purposes for processing their personal data, my retention periods for that personal data, and who it will be shared with (copy attached to application).

On balance I assert that the processing of personal data entailed in my proposed research is necessary in that it is a targeted and proportionate way of achieving a specific purpose and I could not reasonably achieve that purpose by other less intrusive means or by processing less data. In coming to this conclusion, I have considered the following factors:

- The processing of the data will benefit all local authorities in Wales by contributing to credible and timely academic research which seeks to improve the legal enforcement of council tax for both local authorities and individuals in debt.

⁷⁴⁶ General Data Protection Regulation 2018 Article 5.

⁷⁴⁷ General Data Protection Regulation 2018 Article 5.

⁷⁴⁸ <https://www.cardiff.ac.uk/public-information/policies-and-procedures/data-protection/research-participants-data-protection-notice>

- The processing will not be unexpected to the participants as my intended actions will be clearly set out in the information sheet provided.
- My relationship to the intended participants does not raise any conflict of interest or power imbalance to my benefit.
- The intended participants are not vulnerable.
- All participants will have the option to withdraw their consent to take part and their personal data will be accordingly destroyed.

After completion of my project I intend to refer to verbatim quotations and summaries of interview responses in my doctoral thesis and in subsequent publications which may include peer-reviewed journal articles or contributions to published books or reports. I also intend to refer to the data in presentations at academic and industry conferences. I will make these dissemination intentions clear in my information sheet.

I do not intend to share the interview data with my supervisory teams in its raw form as I do not anticipate this being necessary, but they will be privy to draft analysis and discussion chapters in which the data will be referred to. At this stage I will only be referring to the local authority area from which the interviewee stemmed and some general details of their role.

Research Governance

| | Yes | No | N/A |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|----|-----|
| Final Check | | | |
| Please use this section to check that you have completed the following tasks: | | | |
| Have you met your supervisor(s) to discuss your research proposal and whether a submission to the School's Research Ethics Committee is required? (Students only) | <input checked="" type="checkbox"/> | | |
| Have you completed the Research Ethics training modules and obtained a minimum of 14 out of 15 on both quizzes? Are your quiz results included with your submission? (Students only) | <input checked="" type="checkbox"/> | | |
| Have you read the guidance notes and relevant University policy documents? | <input checked="" type="checkbox"/> | | |
| Have you completed the School of Law and Politics Ethical Approval Form? | <input checked="" type="checkbox"/> | | |

| | | | | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|----------|----------|
| Have you signed your Ethical Approval Form? | | | | |
| Has your supervisor seen your Ethical Approval Form and signed to confirm they support your research proposal and submission? | | | | |
| Have you included all participant facing documentation with your submission? <input type="checkbox"/> Have you included a participant consent form? <input type="checkbox"/> Have you included a participant information sheet? <input type="checkbox"/> Have you included a list of participants? <input type="checkbox"/> Have you included a copy of your questionnaire/list of questions? <input type="checkbox"/> Have you included a copy of your participant recruitment advertisement (for example the first contact email or letter)? | | | | |
| 18 | Does your study include the use of a drug? If so, you will need to contact Research Governance before submission (resgov@cf.ac.uk) | | X | |
| 19 | Does the study involve the collection or use of human tissue? If so, you will need to contact the Human Tissue Act team before submission (hta@cf.ac.uk) | | X | |
| 20 | If relevant to your research, has due regard been given to the 'Prevent Duty' Guidance, in particular, to prevent anyone being drawn into terrorism? | | | X |

If there are any other potential ethical issues that you think the Committee should consider please explain them on a separate sheet. It is your obligation to bring to the attention of the Committee any ethical issues not covered on this form

Applicant's declaration

As the applicant conducting this project, I confirm that I have read and understand the University Ethical Guidelines. I also confirm that all research ethical issues have been dealt with in accordance with University policy and the research ethics guidelines of the relevant professional organisation.

Signature:

Name:
.....

Date:

Please submit your Ethical Approval Form in word format to the School Research Officer at LAWPL-Ethics@cardiff.ac.uk

From: Lydia Hayes <HayesL@cardiff.ac.uk>
Sent: 27 June 2019 09:47
To: lawpl-ethics <lawpl-ethics@cardiff.ac.uk>; Jennie Bunt <BuntJL1@cardiff.ac.uk>
Cc: lawpl-ethics <lawpl-ethics@cardiff.ac.uk>
Subject: Re: Application for **Ethical Approval**

Dear Jennie

Thank you for your amended application. I am happy to grant **ethical approval** for this work. Amie will be in touch as soon as possible with a formal **approval** number for you to use on your participant facing information.

Your application was exemplary Jennie and it is clear you have carefully thought through the **ethical** issues on this very important topic.
Best wishes

Lydia

Dr LJB Hayes
Reader in Law, Room 2.10
Co-director LAWLAB Research Centre
Law & Gender Research Group
Research Ethics and Integrity Officer

From: lawpl-ethics
Sent: Thursday, June 27, 2019 9:54:02 AM
To: Jennie Bunt
Cc: lawpl-ethics; Wendy Kennett
Subject: RE: Approval of Application for Ethical Approval

Dear Jennie

Further to Lydia's email confirming approval of your Ethics Application, please could you include the date and internal reference on your consent form and information sheet as follows:

"This project has received ethical approval from the Cardiff School of Law and Politics Research Ethics Committee (SREC) on 27/06/2019 (Internal Reference: SREC/180619/13).

Kind regards

Amie

Bibliography

Blog Posts

Bunt J, 'Defining "Vulnerability" in the Enforcement of Public Debts – The Justice Gap' (13 November 2018) <<https://www.thejusticegap.com/defining-vulnerability-in-the-enforcement-of-public-debts/>> accessed 6 December 2018

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